LIBRARY
SUPREME COURT, U. S.

APPENDIX

Office-Supreme Court, U.S.
FILED
NOV 14 1967
JOHN F. DAVIS, CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 705

GEORGE WILLIAM BRUTON, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 16, 1967

CERTIORARI GRANTED OCTOBER 9, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 705

GEORGE WILLIAM BRUTON, PETITIONER,

vs.

UNITED STATES OF AMERICA

INDEX

	Original	Print
Record from the United States District Court for the Eastern District of Missouri:		
Complaint before U. S. Commissioner on April 25, filed May 20, 1966	1	1
Commissioner's Warrant of Arrest dated April 25, Marshal's Return dated April 26, filed May 20, 1966	2	3
Commissioner's Temporary Commitment dated April 26, Marshal's Return dated April 27, filed May 20, 1966	3	4
Certified copy of Indictment, filed May 11, 1966	4	6
Jury Verdict, filed June 21, 1966	10	7
Court Order, filed July 1, 1966	15	8
Judgment and Commitment, filed July 1, 1966	16	9
Defendant's Motion for Leave to Proceed in Forma Pauperis, filed July 11, 1966	17	10
Notice of Appeal, filed July 11, 1966	19	12
Mandate of U. S. Court of Appeals, Eighth Circuit, filed April 17, 1967	22	13
Proceedings in the United States Court of Appeals for the Eighth Circuit:		
Opinion	24	16
Judgment	38	28
Transcript of Proceedings June 20, 21 and July 1, 1966 in United States District Court for the Eastern District of Missouri, Eastern Division:		
J. B. THORN		
Direct Examination	3	29
Cross-Examination	9	32
Redirect Examination	20	36

	Original	Print
Transcript of Proceedings June 20, 21 and July 1, 1966 in United States District Court for the Eastern District of Missouri, Eastern Division:		
OSCAR FARMER		
Direct Examination	28	38
Cross-Examination	32	41
Redirect Examination	42	47
Recross-Examination	43	47
WILLIAM JAMES EVANS		
Direct Examination	50	52
Cross-Examination	66	59
PLAINTIFF'S CASE	88	61
SHIRLEY MILLER		
Direct Examination	89	62
Cross-Examination	125	73
Redirect Examination	142	
PAUL J. ROBINSON		
Direct Examination	146	75
Cross-Examination	163	75
GEORGE L. MASON		
Direct Examination	164	75
J. B. THORN		
Direct Examination	167	77
Cross-Examination	177	81
OSCAR FARMER		
Direct Examination	191	83
Cross-Examination	195	85
COURT'S CHARGE TO THE JURY	235	88
VERDICT	254	90
ARGUMENTS ON DEFENDANTS' MOTIONS FOR NEW TRIAL	257	91
IN BEHALF OF DEFENDANT BRUTON	264	91
REPLY IN BEHALF OF PLAINTIFF	268	93
IMPOSITION OF SENTENCE	275	94

[fol. 1]

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

Commissioner's Docket No. 5

Case No. 146

UNITED STATES OF AMERICA,

v.

GEORGE WILLIAM BRUTON

COMPLAINT for VIOLATION of U.S.C. Title 18, Section 2114

Before William R. O'Toole, St. Louis, Missouri.

The undersigned complainant being duly sworn states: That on or about April 16, 1965, at St. Louis in the Eastern District of Missouri, GEORGE WILLIAM BRUTON did rob one Paul Robinson, the Clerk in charge of Post Office Contract Station No. 7, at 3809 South Kingshighway, St. Louis, Missouri, the said Paul Robinson then and there having lawful charge, control and custody of money and property of the United States, of the sum of $30.00, more or less, of the money of the United States, and in effecting same he put the life of the said Paul Robinson in jeopardy by use of a dangerous weapon.

And the complainant states that this complaint is based on the following personal knowledge, information and belief:

Complainant ascertained that on the above date an individual who has been identified by the Clerk of said Station as the defendant entered the Contract Station of the St. Louis Post Office at the above address and at pistol point held up Paul Robinson, the Clerk on duty at that time, and robbed the said Paul Robinson of the sum of $30.00, being the property of the United States Post Office, and further, the said witness, Paul Robinson, has stated that defendant was then armed with a pistol.

And the complainant further states that he believes that — are material witnesses in relation to this charge.

J. B. Thorn, Postal Inspector.

Sworn to before me, and subscribed in my presence, April 25, 1966.

William R. O'Toole, United States Commissioner.

Filed May 20, 1966.

[fol. 2] UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

Commissioner's Docket No. 5

Case No. 146

UNITED STATES OF AMERICA,

v.

GEORGE WILLIAM BRUTON

WARRANT OF ARREST

To any United States Marshal or any duly authorized officer:

You are hereby commanded to arrest GEORGE WILLIAM BRUTON, and bring him forthwith before the nearest available United States Commissioner to answer to a complaint charging him with, did rob one Paul Robinson, the Clerk in charge of Post Office Contract Station No. 7, at 3809 South Kingshighway, St. Louis, Missouri, the said Paul Robinson then and there having lawful charge, control and custody of money and property of the United States, of the sum of $30.00, more or less, of the money of the United States, and in effecting same he put the life of the said Paul Robinson in jeopardy by use of a dangerous weapon in violation of U.S.C. Title 18, Section 2114.

William R. O'Toole, United States Commissioner.

Date April 25, 1966.

RETURN

Received April 25, 1966 at St. Louis, Mo., and executed by arrest of George Wm. Bruton at St. Louis Police Holdover on April 26, 1966.

U. S. Commissioner Wm. O'Toole.

Bond $10,000.00.

Hearing Continued, Committed to City Jail.

Date Apr. 26, 1966.

Olin N. Bell, U. S. Marshal, Eastern District of Mo.,
By Vernon Whitlock, Jr., Deputy.

Filed May 20, 1966.

[fol. 3] UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI

Commissioner's Docket No. 5

Case No. 146

UNITED STATES OF AMERICA,

v.

GEORGE WILLIAM BRUTON

TEMPORARY COMMITMENT OF GEORGE WILLIAM BRUTON

To: The United States Marshal of the Eastern District of Missouri.

You are hereby commanded to take the custody of the above named defendant and to commit him with a certified copy of this commitment to the custodian of a place of confinement within the Eastern District of Missouri approved by the Attorney General of the United States where the defendant shall be received and safely kept until discharged in due course of law. The above named defendant has been arrested but not yet fully examined by me upon the complaint of J. B. Thorn, Postal Inspector, charging that on or about April 16, 1965 at St. Louis in the Eastern District of Missouri the defendant did rob one Paul Robinson, the Clerk in charge of Post Office Contract Station No. 7, at 3809 South Kingshighway, St. Louis, Missouri, the said Paul Robinson then and there having lawful charge, control and custody of money and property of the United States, of the sum of $30.00, more or less, of the money of the United States, and in effecting same he put the life of the said Paul Robinson in jeopardy by use of a dangerous weapon in violation of U.S.C. Title 18, Section 2114; and he has been directed to furnish bail in the sum of Ten Thousand dollars ($10,000.00) for his appearance before me at St. Louis, Missouri, on April 29, 1966, at 2:00 P.M., in accordance with all my orders and directions relating thereto, and he has failed to do so.

Dated: April 26, 1966.

William R. O'Toole, United States Commissioner.

RETURN

Received this commitment and designated prisoner on April 27, 1966, and on April 27, 1966, committed him to St. Louis City Jail, and left with the custodian at the same time a certified copy of this commitment.

Dated: Apr. 27, 1966.

Olin N. Bell, United States Marshal. Eastern District of Mo. By Vernon Whitlock, Jr., Deputy.

Filed May 20, 1966.

[fols. 4-9] UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

No. 66 Cr 80(1)

UNITED STATES OF AMERICA, Plaintiff,

v.

WILLIAM JAMES EVANS and GEORGE WILLIAM BRUTON, Defendants.

The Grand Jury charges:

That on or about the 16th day of April, 1965, in the City of St. Louis, in the State of Missouri, and within the Eastern Division of the Eastern District of Missouri, WILLIAM JAMES EVANS and GEORGE WILLIAM BRUTON, the defendants, did make an assault on Paul Robinson, a person having lawful charge, control and custody of United States Post Office Contract Station No. 7, with intent to rob, steal and purloin mail matter, money and other property which were then in the charge, control and custody of the said Paul Robinson, and in attempting to effect such robbery, William James Evans and George William Bruton put the life of the said Paul Robinson in jeopardy by the use of a dangerous weapon, to wit, a revolving pistol.

In violation of Section 2114, Title 18, United States Code.

A True Bill.

[Copy illegible] Foreman.

[Copy illegible], Ass't United States Attorney.

A True Copy of the Original Filed May 11, 1966.

Attest: Harold G. Pryce, Clerk. By ——, ——, Deputy Clerk.

Dated: May 24, 1967, St. Louis, Mo.

[fols. 10-14] UNITED STATES DISTRICT COURT, EASTERN DIVISION, EASTERN DISTRICT OF MISSOURI.

No. 66 Cr 80(1)

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM JAMES EVANS and GEORGE WILLIAM BRUTON, Defendants.

VERDICT

We, the jury in the above entitled cause, on the trial of the Indictment herein, as to Defendant, George William Bruton find as follows;

We find said Defendant, Guilty as charged in the Indictment herein.

Dan L. Blacker, Foreman.

Dated this 21 day of June, 1966.

Filed June 21, 1966.

[fol. 15] UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

No. 66 Cr 80(1)

UNITED STATES OF AMERICA, Plaintiff,

v.

WILLIAM JAMES EVANS and GEORGE WILLIAM BRUTON, Defendants.

ORDER

Defendant George William Bruton's motion for a new trial heretofore filed and argued by counsel is hereby overruled in all particulars.

Roy W. Harper, United States District Judge.

Dated this 1st day of July, 1966.

Filed July 1, 1966.

[fol. 16] UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

No. 66 Cr 80(1)

UNITED STATES OF AMERICA,

v.

GEORGE WILLIAM BRUTON

JUDGMENT AND COMMITMENT

On this 1st day of July, 1966, came the attorney for the government and the defendant appeared in person and with his attorney.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty, entered May 16, 1966, and a jury verdict of guilty, entered June 21, 1966, of the offense of assaulting a person in charge of U.S. Post Office Contract Station No. 7, at St. Louis, Mo., with intent to steal mail matter, money and other property, and placing the life of Paul Robinson in jeopardy in attempting to effect such robbery by the use of a revolving pistol;

In violation of Section 2114, T.18 U.S. Code, as charged in the Indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Twenty Five (25) Years as to and under the charge contained in the Indictment.

IT IS ADJUDGED that the amount of the appeal bond herein is set at $15,000.00.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Roy W. Harper, United States District Judge.
Harold G. Pryce, Clerk. (By) Ellen C. Donovan, Deputy Clerk.

Filed July 1, 1966.

[fol. 17] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

No. 66 Cr 80(1)

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM JAMES EVANS and GEORGE WILLIAM BRUTON, Defendants.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner George William Bruton moves the Court for an order permitting him to appeal to the United States Court of Appeals for the Eighth Circuit, in forma pauperis, from the judgment of the United States District Court, Eastern District of Missouri, Eastern Division, entered on July 1, 1966, pursuant to the provisions of Title 28, U. S. Code, Section 1915, and in support thereof attaches the affidavit of said petitioner.

Petitioner's Notice of Appeal is being filed with this motion and petitioner's affidavit.

Daniel P. Reardon, Jr., Attorney for Petitioner, 706 Chestnut Street, Suite 411, St. Louis 1, Mo. Ch. 1-7325.

AFFIDAVIT OF GEORGE WILLIAM BRUTON

STATE OF MISSOURI,
City of St. Louis, ss:

GEORGE WILLIAM BRUTON, being duly sworn, deposes and says:

1. I am a citizen of the United States and the petitioner in the above action.

[fol. 18] 2. I desire to prosecute an appeal to the United States Court of Appeals for the Eighth Circuit from the judgment entered by the United States District Court, Eastern District of Missouri, Eastern Division on July 1, 1966, but because of my poverty I am unable to pay the costs of said appeal or purchase the transcript of the record or give security therefor and still be able to provide myself and my dependents with the necessities of life.

3. I believe I am entitled to the redress I seek by way of appeal to the United States Court of Appeals.

WHEREFORE, affiant prays that he may have leave to proceed in this court on appeal to the United States Court of Appeals for the Eighth Circuit in forma pauperis.

George William Bruton.

Subscribed and sworn to before me this 7th day of July, 1966.

Karl F. Lang, Notary Public.

My Commission expires 6/6/68.

Copy of the above and foregoing served on Robert J. Koster, Assistant U. S. Attorney, Federal Building, St. Louis 1, Missouri 7/11/66.

Filed July 11, 1966.

[fols. 19-21] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

No. 66 Cr 80(1)

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM JAMES EVANS and GEORGE WILLIAM BRUTON, Defendants.

NOTICE OF APPEAL

Notice is hereby given that George William Bruton, defendant above named, appeals to the United States Court of Appeals of the Eighth Circuit from the sentence and judgment imposed in this proceeding on July 1, 1966.

Daniel P. Reardon, Attorney for appellant George William Bruton, 706 Chestnut Street, Suite 411, St. Louis 1, Mo. Ch. 1-7325.

Copy of foregoing Notice of Appeal delivered to Robert J. Koster, Assistant U. S. Attorney, Federal Building, St. Louis 1, Missouri, this 11 day of July, 1966.

Daniel P. Reardon, Jr.

Filed July 11, 1966.

[fol. 22] MANDATE

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

TO THE HONORABLE THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI.

GREETING:

WHEREAS, lately in the United States District Court for the Eastern District of Missouri, before you, or some of you in a cause between United States of America, Plaintiff, and William James Evans and George William Bruton, Defendants, No. 66 CR 80(1), Eastern Division, wherein judgment and sentence of the District Court as to Defendant, George William Bruton was entered on the 1st day of July, A.D. 1966, which judgment and sentence is set out in the original files of the said District Court, and is incorporated herein by reference thereto, as by the inspection of the record of the said District Court, — which was brought into the United States Court of Appeals for the Eighth Circuit by virtue of an appeal agreeably to the act of Congress, — in such case made and provided, fully and at large appears;

AND WHEREAS, at the September term, in the year of our Lord one thousand nine hundred and sixty-six, the said cause came on to be heard before the said United States Court of Appeals, on the record from the United States District Court for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the judgment and sentence of the said District Court, in this cause, be and the same is hereby, affirmed.

And it is further Ordered by this Court that the defendant in the said District Court, George William Bruton, do surrender himself to the custody of the United States Marshal [fol. 23] for the Eastern District of Missouri, if not now in custody, in execution of the judgment and sentence imposed upon him, within thirty days from and after date of filing of the mandate of this Court in the District Court.

March 22, 1967.

YOU, THEREFORE, ARE HEREBY COMMANDED that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS, the Honorable EARL WARREN, Chief Justice of the United States, the 17th day of April, in the year of our Lord one thousand nine hundred and sixty-seven.

Filed April 17, 1967.

Robert C. Turle, Clerk of the United States Court of Appeals for the Eighth Circuit.

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 18,490

GEORGE WILLIAM BRUTON, Appellant,

vs.

UNITED STATES OF AMERICA.

MANDATE

[fol. 24] UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 18,489

WILLIAM JAMES EVANS, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

No. 18,490

GEORGE WILLIAM BRUTON, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeals from the United States District Court for the Eastern District of Missouri.

[March 22, 1967.]

Before MATTHES, LAY and HEANEY, Circuit Judges.

MATTHES, Circuit Judge.

William James Evans and George William Bruton were jointly indicted, tried and convicted by a jury of violating [fol. 25] 18 U.S.C. § 2114 (1948).[1] Following the entry of judgment imposing the mandatory sentence of twenty-five years they duly perfected their appeals to this Court.

The focal and crucial point both in the district court and on appeal is the admissibility into evidence of two oral con-

---

[1] 18 U.S.C. § 2114 (1948) provides in pertinent part:

"Whoever assaults any person having lawful charge, control, or custody of any mail matter or of any money or other property of the United States, with intent to rob, steal, or purloin [the same] * * * or robs any such person of mail matter, or of any money, or other property of the United States, * * * or puts his life in jeopardy by the use of a dangerous weapon, * * * shall be imprisoned twenty-five years."

fessions made by the defendant Evans. Both confessions were made prior to *Miranda* v. *Arizona*, 384 U.S. 436 (June 13, 1966). Trial, however, commenced on June 20, 1966; hence *Miranda* is applicable and controlling. *Johnson* v. *New Jersey*, 384 U.S. 719 (June 20, 1966).

We first give attention to the offense which was established by uncontradicted evidence.[2]

Paul J. Robinson operated a jewelry store and watch repair shop on South Kingshighway in St. Louis, Missouri. His place of business was also a contract station or branch for the United States Post Office Department, and postal services were offered to the general public. Miss Shirley Miller was, on the date in question, and had been for some time prior thereto, an employee in the store and contract station. At approximately 2:00 P.M. on Good Friday, April 16, 1965 two Negro men entered the establishment and while Miss Miller was waiting on them each drew a gun, pointed it towards Miss Miller, and ordered her to the rear of the premises. Robinson was working in the store behind a partition. He was nevertheless able to see and observe the men through a small window in the partition. Both [fol. 26] Robinson and Miss Miller were commanded by their assailants, at gunpoint, to lie on the floor face down behind the partition. Their legs and arms were bound. Glass showcases were broken and a safe containing Government property was opened. Various articles of merchandise and more than thirty dollars in Government money were taken by the robbers. The victims later were able to free themselves and report the holdup to the police.

Robinson's place of business was located in an area occupied almost exclusively by white persons and was infrequently patronized by Negroes. Miss Miller testified that the individual identified as defendant Evans had been in the store about eight times during the period of a year and one-half prior to the offense. Robinson stated he had sold Evans stamps on the Monday prior to the holdup. In this setting both Robinson and Miss Miller had no difficulty whatever in promptly and positively identifying Evans on April 8, 1966, when they viewed him in a line-up at the St.

---

[2] Neither defendant testified nor offered any evidence during the trial.

Louis Police Headquarters. Only Miss Miller, however, identified Bruton in a later line-up conducted on April 25, 1966. Robinson, "who just saw him [Bruton] come in" and did not see him again while the robbery was in progress, was unable to positively identify Bruton.

At the threshold of the trial the court conducted a hearing out of the presence of the jury for the purpose of determining the voluntariness of certain incriminating statements elicited from Evans during a police interrogation. This procedure comports with the rule prescribed in *Jackson v. Denno,* 378 U.S. 368 (1964). Evans also objected to the admissibility of his incriminating statements during the course of the trial.

The preliminary hearing conducted by the court revealed that Evans was arrested on March 22, 1966 and detained [fol. 27] for a period of nearly two weeks prior to the first interrogation by local officials. At police headquarters, on April 4, 1966, Detective Oscar Farmer, of the St. Louis Metropolitan Police Department interrogated Evans in general about various robberies in the city, but did not specifically question him as to his participation in the Robinson postal robbery. He testified that prior to the interrogation he advised Evans only of his right to have an attorney and was informed by Evans that an attorney already represented him.[3]

Farmer continued his interrogation of Evans on April 8, 1966 after Evans had been positively identified by Robinson and Miss Miller as one of the participants in the postal robbery. Concededly, no warning of any type was given to Evans on this date. Evans repeatedly denied involvement in the robbery during the first two interrogation sessions conducted on the 8th, the second of which transpired in the presence of Miss Miller and Robinson. Evans, however, finally admitted his participation during the third period of questioning later that day. Only sub-

---

[3] Neither party attempted to elaborate as to the nature of the warning given to Evans on April 4th. Notwithstanding the fact that Evans explicitly denied the existence of any such warning on that date, we nevertheless feel justified in concluding that the warning in its limited form fell far short of the constitutional standards set forth in *Miranda, supra.*

sequent to these admissions did Farmer discuss with Evans the possibilities of dropping current state charges involving a Western Union robbery in favor of Federal prosecution. The record is totally silent as to the manner of interrogation, and consequently, we do not infer that Evans' confession was a product of his own voluntary purge of conscience rather than the result of Farmer's psychological pressure during the repeated interrogations.

Following Evans' admissions on the 8th, Farmer contacted J. B. Thorn, a United States Postal Inspector, who [fol. 28] subsequently conducted his own interrogation of Evans in the city jail on April 11, 1966 in the presence of Farmer. Farmer admittedly revealed to Thorn prior to this date the fact that Evans had confessed his role in the crime during the April 8th interrogation and that he had been positively identified by Robinson and Miss Miller. The inference is clear that Farmer desired Evans to reiterate his former admissions of guilt in the presence of Thorn and himself. Thorn's questioning focused specifically on the robbery of the postal station. His testimony, however, corroborated in substance by Farmer, indicated that he gave Evans the following preliminary warning:

> "I told him that he was a suspect in this matter, that he was not required to give any statements, in fact, he was not required to talk to me, that any statements he gave could be used against him in a court of law, and that he further had the right to an attorney."

The discussion between Thorn and Evans then centered on whether Evans was presently represented by counsel. Evans then named his attorney, but in Thorn's opinion gave no indication that he wished to consult with him prior to being interrogated. Thorn's testimony, categorically denied by Evans during the preliminary hearing indicated Evans' apparent willingness to submit to the interrogation process without the assistance of counsel:

> "* * * Mr. Evans stated that Mr. Harris [Evans' attorney] was coming to see him on that particular day. I asked him if he would rather that I wait until Mr. Harris came to the City Jail. He stated no, that we could talk and that he would give Mr. Harris the information."

The Thorn interrogation of April 11th similarly culminated in Evans' admission that he was implicated in the [fol. 29] robbery of the postal contract station. Thorn and Farmer again discussed the possibilities of dropping state charges in favor of a Federal prosecution. Although the record appears somewhat ambiguous as to exactly what point in time this discussion took place, Thorn did testify that he believed it transpired subsequent to the time Evans implicated himself in the robbery.

A complaint was filed on April 11, 1966, with the United States Commissioner charging Evans with robbery of the postal contract station. A warrant of arrest was issued by the Commissioner on the same day, but was not executed until May 3rd, the day after the state charges against Evans were dropped and he was released from state custody. Pursuant to Rule 5(a), Fed. R. Crim, P., Evans was brought before the United States Commissioner on May 3, 1966, at which time it is agreed he was fully advised as to his rights. At Evans' request the case was continued until May 10, 1966. On May 11, 1966 the indictment under which Evans and Bruton were tried was returned and filed with the district court.

On May 4th, Thorn conducted a subsequent interrogation of Evans. This interview likewise proved fruitful in that Evans again described his participation in the robbery in some detail and implicated Bruton as his accomplice.

At the conclusion of the hearing on the motion to suppress, the district court was of the opinion that the failure of Detective Farmer to advise Evans of his rights on April 8th, prior to the confession obtained by Farmer, was totally irrelevant. The only reason expressed by the court for permitting the confession to be introduced was the following:

> "I think Mr. Thorn advised him of his rights, and as to what he told Mr. Thorn at that time, I think it's [fol. 30] admissible. Not getting back into what he may have told Farmer at some other time, because that doesn't have anything to do with it."

In addition the record fails to disclose any finding that Evans had knowingly and intelligently waived the right to have his attorney present during the interrogation by

Thorn. An essential element of voluntariness is an effective waiver by the accused of his right to retained or appointed counsel. As *Miranda* teaches:

> "If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. *Escobedo* v. *Illinois*, 378 U.S. 478, 490, n.14. This Court has always set high standards of proof for the waiver of constitutional rights, *Johnson* v. *Zerbst*, 304 U.S. 458 (1938), and we re-assert these standards as applied to in-custody interrogation." 384 U.S. at 475.

It is doubtful, moreover, whether the court's limited finding in regard to the issue of voluntariness meets the test promulgated in *Jackson* v. *Denno:*

> "Where pure factual considerations are an important ingredient, which is true in the usual case, appellate review in this Court is, as a practical matter, an inadequate substitute for a full and reliable determination of the voluntariness issue in the trial court and the trial court's determination, pro tanto, takes on an increasing finality. The procedures used in the trial court * * * must, therefore, be fully adequate to insure a *reliable and clear-cut determination* of the voluntariness of the confession, including the resolution of disputed facts upon which the voluntariness issue may depend." (Emphasis supplied). 378 U.S. at 390-91. See also *Sims* v. *Georgia*, . . . U.S. . . . January 23, 1967).

[fol. 31] In summary, the district court was required to make a finding on the record with "unmistakable clarity" that (1) the *Miranda* warnings were given; (2) the defendant knowingly and intelligently waived his privilege against self-incrimination (see 384 U.S. at 475); (3) the defendant voluntarily, knowingly and intelligently waived his right to have retained or appointed counsel present at the interrogation; (4) the confession or statement was freely and voluntarily made.

But quite apart from the inadequacy of the court's findings, for reasons stated below, we believe the confessions obtained by Thorn are invalid as a matter of law and should not have been admitted into evidence.

In reaching this decision we are mindful that the pivotal question is whether the circumstances attending Evans' detention by the local police and his confession of April 8th, prior to any warning of his right to remain silent, bring this case within the teachings of *Westover* v. *United States*, 384 U.S. 436 (1966), a companion case to *Miranda*, where the Supreme Court struck down a confession given to the F.B.I. authorities following an interrogation by local officials.

There is present in this case one circumstance, absent in *Westover*, which militates in favor of the validity of the confessions which were received into evidence. There was a lapse of three days between the time Detective Farmer obtained the concededly invalid confession (April 8th) and the time Inspector Thorn, after proper warning, obtained the second confession (April 11th). In *Westover* the interrogation by the F.B.I. began immediately after the interrogation by the local officers had ceased. The Supreme Court viewed this as a "continuous period of questioning", the effect being that the defendant was not adequately warned of his right against self-incrimination until the very end of the interrogation process.

The Supreme Court in *Westover* noted, however, that a different result would have been warranted if the "accused were taken into custody by the second authority, removed *both in time and place* from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them." (Emphasis supplied). 384 U.S. at 496.

The interval of three days may be sufficient to warrant a finding that Evans had been "removed in time • • • from his original surroundings" when he was questioned by Inspector Thorn, but he was clearly still in the custody of local authorities during Thorn's interrogation. This fact, together with Farmer's continuous presence during the interrogation of April 11th, prevented the effective removal of Evans from his original surroundings.[4]

---

[4] Evans was interrogated by Farmer when the first confession was obtained at the police headquarters. He was

There are other compelling circumstances which militate against the validity of the confessions. Evans had been detained in jail continuously for a period of two weeks and three days (March 22nd to April 8th), and, absent any warnings of his rights, had been subjected to at least three interrogations by local officers before he finally confessed to Farmer. He had been a prisoner two weeks and six days before he was adequately advised of his rights. More significant, however, in our view is the circumstance, not present in *Westover,* that Evans had made his inculpatory statements prior to his confrontation with Federal authorities on April 11th. Thus, at the time the warnings were given and the confession relied upon by the Government [fol. 33] was obtained, Evans had already fully revealed his involvement in the robbery. As Justice Jackson aptly stated in *United States* v. *Bayer,* 331 U.S. 532 (1947):

> "Of course, after an accused has once let the cat out of the bag by confessing, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed. He can never get the cat back in the bag. The secret is out for good. In such a sense, a later confession always may be looked upon as fruit of the first." 331 U.S. at 540.

We have studiously pondered the question before us and cannot escape the conclusion that the Federal authorities were, under the teachings of *Westover,* "the beneficiaries of the pressure applied by the local in-custody interrogation." Of course, if Evans had been timely and fully apprised by the local officers of his constitutional right to remain silent in accordance with the rules promulgated by *Miranda,* the incriminating statements later given to Thorn would be invulnerable to constitutional attack.

While we cannot escape the feeling that there was independent, corroborating evidence which strongly sug-

---

again interrogated by Thorn in the presence of Farmer at the city jail. This difference was not meaningful. Evans was on both occasions a prisoner and the atmosphere on April 11th was no different than it was on April 8th.

gested the guilt of Evans, we are nevertheless mindful of the Supreme Court's observation in *Miranda, supra:*

> "Dealing as we do here with constitutional standards in relation to statements made, the existence of independent corrobating evidence produced at trial is, of course, irrelevant to our decisions." 384 U.S. note 52, at 481. See also *Jackson* v. *Denno,* 378 U.S. 368, 376 (1964).[5]

The totality of the circumstances impel us to hold that the confessions before the jury were tainted and infected [fol. 34] by the poison of the prior, concededly unconstitutional confession obtained by the local officer. Our decision, however, is limited to the facts before us and should not be interpreted as a per se rule that would prevent law enforcement officers of one jurisdiction from interrogating an individual who has been detained and questioned by other authorities for a period of time without appropriate warnings. The Supreme Court has stated as much in *Westover,* 384 U.S. at 496. Questions of this nature must be decided on an ad hoc basis. On this record we hold that there was a causal relationship between the unconstitutional confession and the later incriminating statements which were imparted to the jury. This being the situation, a reversal of Evans' conviction is required.

We affirm Bruton's conviction. It should be noted that this defendant at no time moved for a severance as authorized by Rule 14, Fed. R. Crim. P. Perhaps Bruton proceeded on the theory that it was to his tactical advantage to be tried jointly, inasmuch as the evidence relating to his identification was weaker than that pertaining to Evans, and for the additional reason that the confessions were admitted solely as evidence against Evans. Be that as it may, the question is now presented whether Bruton's rights were prejudiced by admission of the invalid statements hereinabove discussed.

The district court in its instructions, to which no excep-

---

[5] In view of the cogent, independent evidence against Evans and in light of the teachings of *Miranda,* we are caused to wonder why the Government prosecutor offered the statements as evidence.

tion was taken, explicitly limited the purpose and effect of the incriminating statements made by Evans.[6] The rule is

---

[6] After the Government had rested, the court cautioned the jury as follows:

> "Gentlemen of the jury, I would like to say to you at this time yesterday there was testimony here with respect to a statement made by the defendant Evans to Thorn, the Postal Inspector, in the presence of, at least in one instance, in the presence of the Detective Farmer, and some reference to a second statement that was made only in the presence of Thorn. That statement, which I will instruct you about in the instructions, if used, can only be used against the defendant Evans. It is hearsay insofar as the defendant George William Bruton is concerned, and you are not to consider it in any respect with respect to the defendant Bruton, because insofar as he is concernd it is hearsay."

In its formal charge to the jury the court again instructed:

> "A confession made outside of court by one defendant may not be considered as evidence against the other defendant who was not present and in no way a party to the confession. Therefore, if you find that a confession was in fact voluntarily and intentionally made by the defendant Evans, you should consider it as evidence in the case against Evans, but you must not consider it, and should disregard it, in considering the evidence in the case against the defendant Bruton.
>
> . . . . . .
>
> It is your duty to give separate, personal consideration to the cause of each individual defendant. When you do so, you should analyze what the evidence shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant. Each defendant is entitled to have his case determined from his own acts and statements and the other evidence in the case which may be applicable to him."

[fol. 35] firmly established that in a joint trial, an incriminating statement made by one defendant which would implicate another defendant is admissible into evidence only against the declarant. The corollary of this rule is that the admission into evidence of a co-defendant's statement, under proper cautionary and limiting instructions, will not necessarily require a reversal of the conviction of the other defendant. *Delli Paoli* v. *United States,* 352 U.S. 232 (1957); *Haggard* v. *United States,* 369 F.2d 968, 975 (8th Cir. 1966); *United States* v. *Gardner,* 347 F.2d 405, 406-07 (7th Cir. 1965), *cert. denied,* 382 U.S. 1015 (1966). As we have noted, the effect of Evans' incriminating statements and the purpose for which they were admitted were outlined to the jury on two occasions in clear, concise and understandable language. The court carefully confined the scope of the statements. To overturn Bruton's conviction we would be required to speculate that the jury, presumably composed of prudent and intelligent men, disregarded the court's instructions and their oaths. The Supreme Court has expressed similar sentiments in dealing with this very question:

> [fol. 36] "To say that the jury might have been confused amounts to nothing more than an unfounded speculation that the jurors disregarded clear instructions of the court in arriving at their verdict. Our theory of trial relies upon the ability of a jury to follow instructions." *Opper* v. *United States,* 348 U.S. 84, 95 (1954).

See also *Delli Paoli* v. *United States, supra,* at 242, and *Golliher* v. *United States,* 362 F.2d 594 (8th Cir. 1966), where we stated:

> "We must assume the jury was capable of assessing the evidence and followed the instructions of the court as they are bound to do by their oath." 362 F.2d at 603.

The evidence designed to establish Bruton's guilt, wholly apart from Evans' statements, is, in our view, necessarily a factor to be considered in determining whether there is a sound basis for deciding that admission of the statements into evidence did not affect the substantial rights of Bruton.

Inasmuch as Bruton challenges the sufficiency of the evidence to sustain his conviction, we have carefully analyzed the evidence against him.[7] The fact question before the jury turned on the identification of Bruton. Although this important element was established by only one of the victims, Miss Miller, her uncontradicted testimony provided the jury with convincing proof of Bruton's participation in the crime.[8]

We need not recount in detail Miss Miller's testimony relating to this aspect of the case. It is sufficient to say [fol. 37] that after her face to face encounter with Bruton during the holdup, she was able to positively identify him at the police line-up on April 25, 1966 and again at the trial.

In summary, we are convinced (1) that there was substantial, independent evidence of Bruton's guilt; (2) that the court's instructions to the jury provided Bruton with sufficient protection so that the admission of Evans' statements, strictly limited to use against Evans, did not work to the prejudice of Bruton.

The judgment of conviction against Evans is reversed and the cause is remanded for another trial. The judgment of conviction against Bruton is affirmed.

---

[7] As the reviewing Court, we have considered the independent evidence of Bruton's guilt in the light most favorable to the Government. *Beatrice Foods Co.* v. *United States*, 312 F.2d 29, 40 (8th Cir. 1963), *cert. denied*, 373 U.S. 904 (1963).

[8] A perceptible characteristic of Bruton was a "bad" eye. This was observed by Miss Miller during the holdup.

[fol. 38] UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 18,490 September Term, 1966

GEORGE WILLIAM BRUTON, Appellant,

vs.

UNITED STATES OF AMERICA.

JUDGMENT

APPEAL FROM the United States District Court for the Eastern District of Missouri.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Missouri, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment and sentence of the said District Court, in this cause, be, and the same is hereby, affirmed.

And it is further Ordered by this Court that the defendant in the said District Court, George William Bruton, do surrender himself to the custody of the United States Marshal for the Eastern District of Missouri if not now in custody, in execution of the judgment and sentence imposed upon him, within thirty days from and after date of filing of the mandate of this Court in the District Court.

March 22, 1967.

Order entered in accordance with Opinion:—

[Copy Illegible] Clerk, U.S. Court of Appeals for the Eighth Circuit.

[fol. a] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

No. 66 CR 80 (1)

UNITED STATES OF AMERICA, Plaintiff,

vs.

WILLIAM JAMES EVANS and GEORGE WILLIAM BRUTON, Defendants.

Transcript of Proceedings—June 20, 21, & July 1, 1966

* * * * * * *

[fols. 1-2] The Court: You gentlemen, if you will, go to your jury room and we will call you. We have a matter that you are not concerned with involving the law, so we will call you back in a few minutes.

(Whereupon, the following proceedings were had out of the presence and hearing of the jury:)

[fol. 3] The Court: You may proceed.

J. B. THORN, being produced, sworn and examined in behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Koster:

Q. Will you state your name, please?
A. J. B. Thorn.
Q. What is your business or occupation?
A. I am an United States postal inspector.
Q. Were you employed as a postal inspector in April of 1965, or '66, excuse me?
A. Yes, I was.
Q. Now, I want to direct your attention to the 11th of April, 1966——

The Court: What date?
Mr. Koster: The 11th of April.

Did you have an occasion on April 11th to see the defendant William Evans in this case?

A. Yes, I did.
Q. Where did you see him?
A. In the City Jail.
Q. St. Louis Municipal Jail?
A. St. Louis City Jail, yes.
Q. Were you alone or were you with someone?
A. I was with someone.
Q. Who were you with?
A. Detective Oscar Farmer of the St. Louis Metropolitan [fol. 4] Police Department.
Q. And Evans was confined in the City Jail at that time?
A. That's correct.
Q. Now, approximately what time of the day did you go there, if you recall?
A. It was after lunch. I would surmise between 1:00 and 2:00 o'clock.
Q. Was this the first time you saw Evans?
A. It was.
Q. Were you introduced to him or had it happened when you got to the jail?
A. When I got to the jail I was introduced to him as a postal inspector by Detective Farmer. After I was——
Q. Was there any other conversation between Evans and Farmer other than he introducing you to him?

Mr. Cooper: I object to that. That would be hearsay.
The Court: The answer to that is yes or no.

Be overruled.

A. There was a conversation.
Q. (By Mr. Koster) Prior to the time that you started questioning Evans?
A. Yes. Detective Farmer informed the——

Mr. Cooper: I'm going to object. That would be hearsay [fol. 5] whatever Farmer told.
The Court: Be overruled. It was in the presence of him.

A. That what my purpose there was was the conversation between the detective and the defendant.
Q. (By Mr. Koster) Told him you were investigating——
A. The armed robbery of Robinson Jewelry Store and Contract Station No. 7.

Q. He told them who you were?

A. Right.

Q. What did you do at that point?

A. At that point, I have a commission which shows my name and my title, I gave that to Mr. Evans. I again told him who I was and that any matter involving the post office department I was interested in, that I was specifically investigating the armed robbery of the Robinson Jewelry Store which contained Contract Station No. 7.

Q. Now, did you give Evans any further advice before you started to question him?

A. I did.

Q. What did you tell him?

A. I told him that he was a suspect in this matter, that he was not required to give any statements, in fact, he was not required to talk to me, that any statements that he gave [fols. 6-8] could be used against him in a court of law, and that he further had the right to an attorney.

Q. All right, now, after giving him that advice did you discuss any more about his right to have an attorney or anything of that nature concerning an attorney?

A. We did.

Q. What was that discussion?

A. I asked him if he had an attorney.

Q. You asked Evans that?

A. That's correct.

Q. What did Evans say?

A. He did have an attorney.

Q. Did he give you the name of his attorney?

A. Mr. Al Harris.

Q. Was there any other discussion about Mr. Harris at that point?

A. There was. Mr. Evans stated that Mr. Harris was coming to see him on that particular day. I asked him if he would rather that I wait until Mr. Harris came to the City Jail. He said no, that we could talk and that he would give Mr. Harris the information.

Q. Did you then start to question Mr. Evans?

A. I did.

Q. Did he then give you some answers to your questions?

* * * * * * *

[fol. 9] Q. All right. Now, when you told him he was a suspect in the—this armed robbery of the Subcontract Station, did you know then that he had been in jail for something else?

A. Yes, sir.

Q. How did you find out he was in jail for something else? Did someone tell you that?

A. Yes, sir.

Q. As a matter of fact, he was in jail on suspicion of robbing a Western Union office, is that right?

A. I have learned that, yes, sir.

Q. Did you know that then?

A. I believe that I did. I'm not sure whether I called the Prosecutor's office, but I did know that.

Q. Eventually before you left that day and after talking to Evans you knew he was in jail and charged with a robbery of a Western Union office?

[fol. 10] A. That's right.

Q. And you knew that that was a State charge?

A. Yes, sir.

Q. Now, did you make any statements to Evans during the course of this conversation on April 11th concerning the Western Union charge?

A. Other than maybe the fact "Did you do it?" I had no interest in the Western Union—the armed robbery of the Western Union. That is not under my jurisdiction, sir.

Q. I think you said either you knew he was charged with it when you came into the meeting or you called the Circuit Attorney's office?

A. No, I knew it before I—I found it out either at the time of the meeting or I called the Circuit Attorney's office before I went there. I don't recall which, because I talked to them on several occasions.

Q. Who did you speak to in the Circuit Attorney's office?

A. One of the ladies there.

Q. Did you ever speak to any of the assistants?

A. I believe—not on that particular day, no, sir.

Q. How about prior to that date?

A. Not prior to that date, no, sir.

Q. Did you make any statement to Evans that you would [fols. 11-12] use your efforts to have the State charge dropped if he would confess to the—this Federal charge?

A. Not an effort to have the State charges dropped, no, sir, that I couldn't.

Q. What did you say to him concerning the State charge?

A. He indicated to me a desire to clean up the Federal charges. The only thing that I could do under those circumstances was I talked with his attorney, Mr. Harris.

Q. Was that after this date?

A. Yes, sir.

Q. I'm talking right now about that date and during the course of that conversation, on that date, did you mention to him that you might be able to get the State charge dropped?

A. I would talk to Mr. Harris.

Q. What did you tell him that you would talk to Mr. Harris about?

A. To see if there could something be done to—for him to be released to Federal authorities.

Q. Now, at that time when you mentioned that to Evans had he given you a statement yet?

A. I believe he had told me that he was implicated, sir.

[fols. 13-14] Q. And, well, what did you want to know in addition to that? Did you want to know more facts about it than what you have just said?

A. Yes, I asked other questions on that date.

Q. Well, is that when you then said something about "I will talk to Mr. Harris about the State charge"?

A. After he had indicated to me that he would like to get the two charges or all the charges taken—taken care of, I think would be an adequate description.

* * * * * * *

[fol. 15] By Mr. Reardon:

[fol. 16] Q. Mr. Thorn, you mentioned that you informed Evans that he was a suspect when you went to the City Jail?

A. Yes, sir.

Q. Now, upon what did you base that conclusion? What information did you have that permitted you to classify him as a suspect?

A. I had been informed that he had been identified.

Q. He had been identified, and who informed you?

A. I believe Detective Farmer informed me of that fact.

Q. He had been identified by how many individuals?

A. Mr. Robinson and Miss Miller.

Q. Now, do you have the date, do you know the date when that identification was made?

A. No, sir, I don't.

Q. Did you ask Farmer?

A. I believe that I did, but it doesn't——

Q. What representations did Farmer make to you when he originally contacted you with regard to the case?

A. That one of the men involved in the holdup had been identified.

Q. Did he indicate to you that he had questioned that individual, specifically Evans?

A. Yes, sir.

[fol. 17] Q. Did he also tell you that individual, Evans, had denied the robbery?

A. I can't—I don't recall whether it was at the time—I was out of town when this happened. I received a telephone call.

Q. When the identification occurred?

A. Yes, sir. I received a telephone call and I returned the call and I don't remember in what precise point I was advised of this or by who.

Q. Well, perhaps the date is April 8th that the identification was made?

A. I don't know, sir.

Q. Farmer made no representation to you, did he, as you went over to the City Jail that his man Evans had admitted the robbery?

A. I believe that he indicated that they had—he had been interrogated and that Evans had discussed the robbery with him.

Q. Did he indicate that he had admitted it or denied it?

A. I'm not positive but I believe he indicated that there was an indication that he was involved. I won't say admitted, an indication that he was involved.

Q. Now, Detective Farmer was anxious at that time to [fol. 18] help solve this particular case, was he not?

A. I would say so, sir.

Q. And certainly you had knowledge when you went over to the City Jail to see this man that he was a State prisoner charged in another robbery?

A. Yes, sir.

Q. And he had an attorney?

A. He was a State prisoner and I don't recall at what stage I learned what he was charged with.

Q. Now, when you went over with Detective Farmer did Detective Farmer make any statements to Evans in your presence other than just introducing you?

A. Other than to talk to him.

Q. Well, did he make any statements with regard to dropping—having the State charges dropped so that you can wind up everything in a Federal prosecution?

A. That was probably discussed, yes.

Q. By Detective Farmer and yourself?

A. Yes, sir.

Q. And subsequently I assume you do have knowledge that the State charges were dropped?

A. Yes, sir.

Q. In favor of the Federal prosecution?

A. Yes, sir.

[fol. 19] Q. Now, then, when did you apply for the warrant or when did you bring this man to the United States Commissioner? I'm speaking of Evans.

A. An information was filed on that same day.

Q. That was on the 11th?

A. Yes, sir.

Q. Did you go to talk to anybody with regard to dismissing the charges in the Circuit Attorney's office, the State charges?

A. I discussed it with one of the assistants, I don't recall his name, that there was a Federal violation involved.

Q. Now, then, prior to discussing it with him did you contact Al Harris, the attorney for Mr. Evans, in the State charge?

A. I talked with Mr. Harris about it. I don't recall whether it was that day or the following day.

Q. Which day are we speaking of? We are speaking of after the 11th now?

A. No, I don't recall whether it was the 11th or following that.

Q. Well, the point is that you did speak with Mr. Harris with regard to obtaining a dismissal of the State action, did you not?

[fol. 20] A. Yes, sir.
Q. So you did talk to Evans' attorney, correct?
A. Yes, sir.
Q. After the admission?
A. Yes, sir.
Q. Not before?
A. No, sir.

Mr. Reardon: That is all I have.
Mr. Koster: I have a matter I didn't bring out on direct examination, your Honor.

Redirect examination

By Mr. Koster:

Q. Mr. Thern, after April 11th did you ever see Evans again?
A. Yes, I did.
Q. When was the next time?
A. I believe it was on May the 4th.
Q. Where did you see him on that occasion?
A. In the City Jail.
Q. Who was present on that occasion?
A. Only Mr. Evans and I.
Q. Did you question him on that occasion?
A. I did.
Q. Prior to questioning him on May 4th did you advise [fol. 21] him of his rights?
A. I did.
Q. What did you tell him?
A. That again I was continuing the investigation in the armed robbery of Contract Station No. 7 operated by Robinson Jewelry Store, that he was not required to make any statements to me, and that any statements that he could make could be used against him in a court of law.
Q. Did you advise him of his right to an attorney on May the 4th?
A. Yes, sir.
Q. Had you been in the United States Commissioner's office on May the 3rd?
A. Yes, sir.
Q. You were present in the Commissioner's courtroom?
A. In the Commissioner's hearing, yes, sir.
Q. Was Evans in there that day?

A. Yes, sir.

Q. Was he brought before the Commissioner?

A. Yes, sir.

Q. Did the Commissioner advise him of his rights to not to make a statement, that it may be used against him and that he had a right to an attorney?

A. Yes, sir.

[fol. 22] Q. And you were present when that advice was given to him?

A. Yes, sir.

Q. Did the Commissioner offer to appoint him an attorney? What was done about his representation at that point on May 3rd?

A. At that point——

Mr. Cooper: I will object to anything the Commissioner may have said to him as being hearsay.

Mr. Koster: Well, the defendant was there, your Honor.

The Court: Be overruled. Only as to what was said in the defendant's presence.

Q. (By Mr. Koster) What was the conversation between the Commissioner and the defendant as to an attorney on May the 3rd?

A. The conversation was that the defendant believed that he had an attorney or would secure an attorney.

Q. So he——

A. The Commissioner did not appoint an attorney.

Q. He said he was going to get his own counsel?

A. Yes, sir.

Q. Now, prior to going to the jail on May the 4th did you contact Mr. Al Harris?

[fol. 23] A. Yes, I did.

Q. What was the purpose of contacting Mr. Harris?

A. The last attorney of record that I had was Mr. Harris. I contacted him and asked him if he had any objection to me interviewing Mr. Evans again.

Q. What did he say?

Mr. Cooper: Objection, that would be hearsay, Judge, anything Mr. Harris would say.

The Court: Well, this is a matter before the Court. I'll hear it for what it may be worth.

Q. (By Mr. Koster) What did Mr. Harris say?

A. He had no objection.

Q. Now, on May the 4th, then, did you again question Evans in the City Jail?

A. I did.

Q. Did he answer your questions on that date?

A. He did.

Q. Now, going back to April 11th when you talked to him about the State charges and the Federal charges and the possibility of dropping the State charges, was that before or after he implicated himself in the robbery of the subcontract station?

A. It would have to have been after.

Q. Did you go immediately or did you begin questioning [fols. 24-27] him immediately about his participation in the robbery?

A. In the Contract Station 7?

Q. Yes.

A. Yes.

Q. And afterwards you discussed——

A. During the initial interview I gathered information about him personally, his age, where he lived, his family, and from there we went into the discussion of the armed robbery.

Q. And then after that you discussed the disposition of the various charges?

A. No, I told him that I could not promise him anything.

Q. I understand that, but was that after that was discussed?

A. Right.

Q. The possibilities of the various dispositions?

A. Right, still understanding that I could make him no promises.

* * * * * * *

[fol. 28] Oscar Farmer, being produced, sworn and examined in behalf of the plaintiff, testified as follows:

Direct examination

By Mr. Koster:

Q. Will you state your name, please?

A. Oscar Farmer.

Q. Keep your voice up. You are a member of the St. Louis Metropolitan Police Department?

A. I am.

Q. What is your assignment now?

A. Robbery Division, Detective Bureau.

Q. In March and April of 1966 you were in the same assignment?

A. I was.

Q. Now, Officer, did you have occasion to assist in the investigation of the Robinson Jewelry holdup?

A. I did.

Q. When was the first time, or did you ever question William Evans in connection with that offense?

A. I did.

Q. Do you recall the date, the first time you questioned Evans?

[fol. 29] A. It's about the 4th, I think it was.

Q. Fourth of what?

A. April.

Q. Keep your voice up.

A. April.

Q. April 4, 1966?

A. That's right.

Q. Now, did you advise him of his rights to have an attorney at that time?

A. He was advised, yes.

Q. Did you question him again?

A. I did.

Q. When was the next time you questioned him?

A. Wait a minute. I want to correct that.

Mr. Cooper: Speak up.

A. I want to correct that. The next date we brought him in he wasn't questioned by us, he was questioned by Mr. Thorn.

Q. (By Mr. Koster) Let's get this straight. Did you question him on April the 8th, specifically?

A. That's right.

Q. A Friday?

A. That's right.

Q. Were you there at the show-up that day?

[fol. 30] A. I was.

Q. Do you know Miss Miller and Mr. Robinson?

A. I do.

Q. Were they there?
A. They were also there, yes.
Q. After the show-up you questioned Evans?
A. I did.
Q. Did you advise him of his right to have an attorney at that time?
A. Yes, he was advised.
Q. Are you sure of that?
A. I'm sure.
Q. On April the 8th?
A. On the 8th we didn't inform them. We had informed them prior to that.
Q. So you questioned him on April 8th and you didn't advise him of his right to have an attorney?
A. That's right.
Q. Did you question him in the presence of Miss Miller and Mr. Robinson?
A. I did.
Q. Did you advise him of his right to have an attorney at that time?
A. No, I didn't.
[fol. 31] Q. That is on April the 8th?
A. That's right.
Q. So when you questioned him on the 8th he was not advised of his right to counsel or that he could have an attorney present?
A. That's right.
Q. Now, did you question him any more between April the 8th and April the 11th?
A. No, on the 11th he was questioned by Mr. Thorn.
Q. Did you question him between April 8th and April 11th?
A. No, I didn't.
Q. Where did the questioning on April the 8th take place?
A. That was at police headquarters.
Q. At Twelfth and Clark?
A. Twelfth and Clark, that's correct.
Q. What was done with him when you were finished questioning him that day?
A. He was taken back over and placed in the City Jail.
Q. Where did you see him the next time?
A. The next time we saw him at the City Jail.

Q. And that was on April the 11th?
A. That's right.
[fol. 32] Q. And that was you and Thorn?
A. That's right.

Mr. Koster: I have no further questions.

Cross-examination

By Mr. Cooper:

Q. Officer Farmer, did you arrest Mr. Evans?
A. No, we didn't arrest him, no.
Q. Were you the one that picked him up on the State charge?
A. No, we wasn't.
Q. You did not?
A. No.
Q. Do you know when he was arrested for the State charge?
A. No, I'm not positive of the date on that.
Q. Would it have been around sometime around March 22nd or 23rd of this year?
A. It could have been. I'm not positive.
Q. Well, am I off a day or so at the most?
A. Well, I'm not positive. I don't know.
Q. Well, you first questioned Evans on April 4th. He had been in City Jail before then, hadn't he?
A. Yes.
Q. Do you know approximately how long he had been in
[fol. 33] City Jail before April 4, 1966?
A. No, I don't.
Q. Would it have been as much as a week?
A. I don't know.
Q. You don't know. All right. Now, how did you happen to question Evans on April 4th?
A. We questioned him relative to robberies.
Q. In general?
A. Yes.
Q. I see. And at that time did you tell him that you were questioning him concerning the Robinson Jewelry robbery?

A. At that time we didn't question him about the Robinson Jewelry.

Q. You were just questioning him in general?

A. That's right.

Q. So the answer to my question is no you didn't tell him that you were questioning him concerning the Robinson Jewelry Company?

A. No.

Q. All right. Now, on April 4th, then, did you advise him that he had a right to an attorney?

A. Yes.

Q. Did you know then that he had an attorney?

[fol. 34] A. He said he had an attorney.

Q. All right, and, therefore, you knew on April 8th that he had an attorney also?

A. Yes.

Q. And you knew on April 11th he had an attorney?

A. He said he had an attorney.

Q. Did he tell you the attorney's name?

A. Yes.

Q. Who was it?

A. Al Harris.

Q. Now, as I understand it, then, on April 8th you questioned him again but you did not advise him of any of his rights?

A. No.

Q. And at that time on April 8th did he deny involvement in this robbery of the Robinson Jewelry Company?

A. No, he didn't.

Q. He did not deny it?

A. No.

Q. When did he deny involvement in the Robinson Jewelry robbery?

A. Maybe I can correct that statement.

Q. All right.

A. He did at first deny it and then admitted it.

[fol. 35] Q. Well, let's go back then. When, on what date if you recall——

A. That was on the 8th.

Q. All right. As I understand it, correct me if I'm wrong, at first when you discussed it with him on April 8th he denied any involvement in the Robinson Jewelry robbery?

A. That's right.
Q. Is that right?
A. That's right.
Q. Now, did you continue to interrogate him on that date?
A. No, we didn't.
Q. You didn't interrogate him any more on that date?
A. I did some more that date, not at that time.
Q. Not at that time. Later on in the day?
A. That's right.
Q. When he first denied any involvement in the robbery who was present if anyone besides you and he?
A. Detective Bradley.
Q. Anyone else present?
A. That is all.
Q. Did you tell Evans that you would be back later to talk to him or something?
[fol. 36] A. No, we didn't.
Q. Then I assume you came back to the City Jail, though, later that day?
A. That's right.
Q. Was anyone else present with you and Evans when you interrogated him the second time that day?
A. Yes, there were.
Q. Who was present this time?
A. Detective Bradley and myself and Miss Shirley Miller and Paul Robinson.
Q. And at that time did you question him again concerning the Robinson Jewelry's case?
A. That's right.
Q. And as I understand it you still did not advise him then of his rights, is that correct? Is that a correct statement?
A. That's right.
Q. And then did he say to you he did not want to discuss the Robinson Jewelry case?
A. He denied it.
Q. He denied it again?
A. Yes.
Q. Then did you and Robinson and Miss Miller leave?
A. That's right.
[fol. 37] Q. And Bradley left?
A. That's right.

Q. Did you come back a third time that day to talk to Evans?

A. We did.

Q. Who was present on that third time?

A. Detective Bradley and I.

Q. Just the two of you?

A. That's right.

Q. And on that third occasion as I understand it you did not advise him of his rights?

A. That's right.

Q. Now, did he tell you then that he didn't want to talk about this Robinson Jewelry holdup?

A. No, he didn't.

Q. Did he admit it on that date?

A. He admitted it that time.

Q. Then he admitted it, is that right?

A. Yes.

Q. Now, as I understand it then, you didn't see him again until when?

A. The 11th.

Q. Were you present when Mr. Thorn interrogated Mr. Evans?

[fol. 38] A. I was.

Q. And did you or Mr. Thorn advise him if at all of his rights on that date?

A. Mr. Thorn advised him.

Q. You didn't say anything?

A. No, I didn't question him.

Q. Well, now, on April 8th did he admit this robbery?

A. Yes.

Q. What did you come back to talk to him about then on April 11th?

A. On the 11th we came back with Mr. Thorn to question him, that he had admitted the robbery prior to that.

Q. Why did you come back a second time? That is what I mean, with Mr. Thorn, if he had already admitted it on April 8th?

A. Mr. Thorn, he is the postal inspector, and he is supposed to have the information, have knowledge of the type of offense.

Q. Then on April 11th Mr. Thorn comes back just with you, is that right?

A. Yes.

Q. Now, when was Mr. Evans taken to the United States Commissioner?

A. We wasn't present when he was taken before the [fol. 39] Commissioner.

Q. Did you take him over there?

A. No, we didn't.

Q. Do you know when he was taken?

A. I am not positive on that.

Q. Do you know if he was taken before you questioned him with Mr. Thorn on April 11th?

A. No, he was taken afterwards.

Q. He was taken afterwards?

A. Yes.

Q. Was it the same day, do you know, or the next day, or next week?

A. I'm not positive of the date.

Q. So certainly between April 4th, 1966, and April 11th, seven days, he was not taken before a United States Commissioner in that one-week period, is that right?

A. No.

Q. Is that a correct statement?

A. That's right.

Q. There is a reward out on this case, isn't there?

A. I'm not positive whether there is or not.

Q. You don't know if there is an award out?

A. I don't know, that is exactly.

Q. I didn't ask you the amount, I said did you know if [fol. 40] there is a reward out?

A. I don't know whether there is a reward on this particular case or not.

Mr. Cooper: I have nothing further, your Honor.

By Mr. Reardon:

Q. Did you inform the postal inspector on the 11th, that is the date of his visit to the City Jail with you, that Evans had admitted this offense?

A. I did.

Q. So that he knew that he had already admitted it to you, is that correct?

A. That's correct.

Q. Did you also inform him that Al Harris, Mr. Al Harris, represented Evans?

A. No, I didn't.

Q. You didn't contact, between the 8th of April and the 11th of April, you didn't contact Mr. Al Harris, did you?

A. No, I didn't.

Q. And you didn't inform him in advance that you were bringing Mr. Thorn, the postal inspector, to interrogate his client, did you?

A. No, I didn't.

Q. You say there was no instructions given him on April [fol. 41] the 8th with regard to his rights, that is, this fellow Evans' rights?

A. No.

Q. You did know at the time that you questioned him that he had a lawyer and had a State charge that had been pending for some time?

A. Yes.

Q. Because you had questioned him some good—perhaps a week earlier with regard to other offenses?

A. Yes, he had been given a chance to talk to his lawyer, call his lawyer by telephone.

Q. Did you talk or discuss with him the possibilities of seeing that the State charges were dropped in favor of Federal prosecution?

A. Yes.

Q. What did you tell him, Oscar?

A. I told him there was a possibility that the State may drop their charges in favor of the Federal prosecution. I think I told him that.

Q. And did he seem to desire the Federal prosecution in preference to the State?

A. That I'm not sure. I'm not positive of that.

Q. What were his problems with regard to the State prosecution, do you know?

[fol. 42] A. No, I don't. I don't recall.

Q. Did you make any representation to him that perhaps he could make a bond through the Federal courts easier than in the State courts?

A. No, I didn't.

Q. No discussion of that nature?

A. No.

Q. Did you talk with anyone with regard to dismissing the State charges?

A. No, I didn't.
Q. You did not.
A. No.
Q. Were they dismissed?
A. They were dismissed in favor—I don't know if they are pending, I'm not positive, pending the outcome of this case.
Q. If I were to tell you—oh, I see. But presently they are dismissed, are they not?
A. Yes.
Q. In other words, he is presently a Federal prisoner not a State prisoner?
A. That's right.

Redirect examination.

By Mr. Koster:

[fol. 43] Q. Detective Farmer, I just have one question: The interrogation on April 8th, it took place in police headquarters, is that correct?
A. On the——
Q. April the 8th?
A. That's right.
Q. All of it in police headquarters?
A. That's right.
Q. Not in the City Jail?
A. That's right.

Mr. Cooper: May I ask just one more question, your Honor?

Recross-examination.

By Mr. Cooper:

Q. Detective Farmer, when you mentioned the possibility that the State charges might be dropped, was this on April 8th or April 4th? Just when was that?
A. No, this was on the 8th.
Q. On the 8th?
A. Yes.
Q. Before then he had not confessed to anything?
A. We hadn't questioned him until the 8th relative to the Federal charge.

Q. I see, but again when you told him there was a possi-
[fol. 44] bility that the State charge might be dropped, this was on April 8th?

A. That's correct.

Q. And this was before he had admitted anything, isn't that true?

A. No, this was—this wasn't before he admitted it, no.

Q. You mean it was after he had admitted it?

A. Yes.

Q. Did he admit it on April 8th?

A. Yes.

Q. And on April 11th?

A. That's correct.

Q. And he admitted this particular crime before you told him there was a possibility that the State charges might be dropped?

A. That's correct.

Mr. Cooper: I have nothing further, your Honor.

By Mr. Reardon:

Q. You prepared a supplementary police report with regard to this, did you not?

A. Yes.

Q. Over there in the St. Louis Police Department?

A. You mean to the admissions?

[fol. 45] Q. That is what I'm going to get around to asking you.

A. No.

Q. The supplementary report doesn't reflect an admission on April 8th, does it?

A. No.

Q. It only reflects an admission on April 11th?

A. That's right.

Q. Why would you have left that out of the supplementary report?

A. We had the—we had completed the report and at the time he gave that to me for confidentially, and we had completed the report and after we completed the report we talked to him, and he gave it to me, he didn't give his part confidentially, but he involved someone else, and we had promised him that we wouldn't divulge that, so with the promise I did not do it.

Q. In other words, he had given you confidential information on the 8th?

A. That's right.

Q. And therefore it isn't reflected in the report, and it was after you had received the confidential information that you brought Mr. Thorn over there on the 11th?

A. Yes.

Q. That wasn't going to be confidential, was it?

[fol. 46] A. Well, the information that I had was still confidential because I still didn't divulge——

Q. Didn't you tell Mr. Thorn about the confidential information?

A. No.

Q. You did not?

A. No, the confidential information wasn't on him, it was on someone that was with him, and he didn't care to mention that.

Q. Pardon me?

A. The confidential information was on a different subject that he didn't want to mention at the time.

Q. Does the confidential information of April 8th have anything to do with the Robinson Jewelry Store?

A. Yes, it did.

Q. I assume it implicated someone else?

A. That is definitely right.

Q. So he admitted it then himself, that is your testimony here, on the 8th of April he admitted——

A. That's right.

Q. That was confidential?

A. No, that part wasn't confidential. The confidential part was who was involved with him.

Q. You may have made an effort to keep that confidential [fol. 47] as a matter of fact, but, in other words, you brought Mr. Thorn over on April 11th to make it official?

A. That's right.

Q. There was implication in the April 11th statement to Mr. Thorn, was there not?

A. On the 11th, no, on the 11th he still didn't tell Mr. Thorn who was with him.

Q. He did not?

A. No, not in my presence, I'll say it like that.

Q. Were you ever present with Mr. Thorn and the defendant Evans on an occasion other than the 11th of April?

A. Only on the one occasion.
Q. Just that one occasion?
A. Yes, sir.

Mr. Koster: I have nothing further.
The Court: Stand aside.

(Witness excused.)

The Court: Call your next witness.
Mr. Koster: That is all I have, your Honor.
Mr. Cooper: If the Court please, at this time I would like to introduce some evidence, but I would like to reserve my client's privilege against waiving his right to self-incrimination by putting both he on and also a record of the file of the Circuit Court——
[fol. 48] The Court: Bring the jury in, we might as well send them to lunch.

(Whereupon, the following proceedings were had in the presence and hearing of the jury:)

The Court: You all can just stand here without getting in the box.
During the noon hour, gentlemen of the jury, do not discuss the case among yourselves, let anyone talk to you about it or talk to anyone about it. We're going to be another thirty minutes, I think, here on this, with which you are not concerned, no need of you having to stay in there, so you will be excused at this time until two o'clock.

(Whereupon, the following proceedings were had out of the presence and hearing of the jury:)

The Court: Call your first witness.
Mr. Cooper: Yes, your Honor, may it be understood that this will not waive his right to self-incrimination?
The Court: What is your position?
Mr. Koster: You mean call—no, he's just being called for the purpose out of the hearing of the jury?
Mr. Cooper: Correct.
Mr. Koster: That is agreeable.
The Court: What do you want the——
Mr. Cooper: Just the court file.
[fol. 49] The Court: You ought to be able to stipulate on that.

Mr. Cooper: The only one I want is involving William James Evans.

The Court: What is it you want to show?

Mr. Cooper: By this File 773-0, entitled "State of Missouri vs. William James Evans," this involves that robbery at the Western Union office. It shows that this man was charged on an information with this particular crime on March 23, 1966. The file also shows that this charge was dismissed on May 2, 1966, that this file also shows that an information—looks like a supplementary information was filed on April 5, '66.

That is all admitted, isn't it, Mr. Koster?

Mr. Koster: Your Honor, maybe just to clarify the record, it indicates on March 23rd that defendant was charged with robbery in the first degree by means of dangerous and deadly weapon in the Court of Criminal Correction in the City of St. Louis. He, of course, then was certified to the Circuit Court under another information which was filed on April 5, 1966, in the Circuit Court of the City of St. Louis, so he had—apparently he had his preliminary hearings and motions, which are not reflected in this file, this is the Circuit Court file, they had preliminary hearings and motions in front of the judge of the Court of [fol. 50] Criminal Correction and was later certified to the St. Louis Circuit Court. This is the St. Louis Circuit Court file. We don't know from this file exactly the date and what happened in the Court of Criminal Correction.

Mr. Cooper: Except we know this charge was dropped on May 2, 1966.

Mr. Koster: Oh, yes.

Mr. Cooper: That is the only purpose of this file.

The Court: Very well.

Mr. Cooper: Should we let this man take it back since all of this is agreed to?

The Court: I don't know.

Mr. Cooper: It's all stipulated to?

Mr. Koster: Yes.

Mr. Cooper: All right, thank you.

WILLIAM JAMES EVANS, being produced, sworn and examined in behalf of the defendants, testified as follows:

Direct examination.

By Mr. Cooper:

Q. Your name, please?
A. William J. Evans.
Q. Mr. Evans, when were you first arrested and brought to the City Jail in March of 1966?
[fol. 51] A. I was arrested on March 22nd of this year and I was brought over to the City Jail the 24th of March.
Q. When did you first find out that you were suspected of having robbed the Robinson Jewelry Company and the Post Office Subcontract Station?
A. Well, first time I found it out it was—I don't remember the date, but I think it was about a week after I was in jail.
Q. And did either Officer Farmer or Mr. Thorn at that time tell you you were suspected of this crime?
A. No, they didn't.
Q. You found out through some other source a week later?
A. Yes.
Q. Now, when did you first speak to either Officer Farmer or Inspector Thorn?
A. Well, I spoke to Mr. Farmer first over at the police headquarters. He came over after I was in jail and got a court order to interrogate me of a robbery of a subpost office on South Kingshighway.
Q. Do you recall what date this was?
A. No, I don't remember the date.
Q. Do you remember what day of the week it was?
A. It was on—it was on a Friday.
[fol. 52] Q. Was that on Good Friday of this year?
A. Good Friday.
Q. And do you know if Good Friday was April 8th of this year?
A. No, I didn't.
Q. Whatever Good Friday was of this year, that was the first time you spoke to Officer Farmer, is that right?
A. Yes.

Q. Now, prior to speaking to Officer Farmer did he tell you what you were suspected of and why he wanted to talk to you?

A. Well, he didn't tell me I was suspected of anything. He said he had a robbery that he had on me, he wanted to talk to me about.

Q. Another robbery?

A. He had this robbery, this post office robbery he wanted to talk to me about.

Q. Is that what he told you?

A. Yes.

Q. I see. Did you talk to him about the post office robbery?

A. Well, I denied the fact of knowing anything about it.

Q. Well, but you did talk to him about it?

[fol. 53] A. Yes.

Q. Before you said anything about this did he advise you of any of your rights?

A. No, he didn't.

Q. Did he say anything to you about your right to have an attorney?

A. Well, he asked me if I had an attorney. I told him yes, it was Al Harris.

Q. And did he advise you that anything you said, you might say, could be and would be used against you?

A. No, he didn't.

Q. Then did you go on and speak to him anyway?

A. I didn't have anything to say to him.

Q. Did you deny involvement in this robbery?

A. I denied it.

Q. Was anyone present besides you and Farmer?

A. I think it was Bradley.

Q. Bradley. At that time had you been brought to the U. S. Commissioner as yet?

A. No, I hadn't.

Q. Now, did you ever talk to anyone else that day besides Farmer and Bradley?

A. No, I didn't.

Q. And did you speak to Farmer after that time?

[fol. 54] A. Yes, I spoke to him.

Q. Did you speak to him more than once that day or did you speak to him again that day?

A. Well, they kept questioning me that day and I kept

denying it, the fact that I knowed anything about the robbery.

Q. Was that on that date?

A. Yes.

Q. In other words, you denied all involvement on April 8th or Good Friday, whatever that was?

A. Yes.

The Court: Now, let's just not worry too much about the dates. You're assuming that he knows. Let's just find out how many dates there were.

Mr. Cooper: All right, Judge.

The Court: I mean the particular date doesn't mean anything.

Mr. Cooper: All right.

The Court: He doesn't know what it is.

Q. (By Mr. Cooper) On that day you denied any involvement in it?

A. Yes, I did.

Q. Did you speak to Officer Farmer or Mr. Thorn after that time, after that date?

[fol. 55] A. I spoke to Mr. Farmer.

Q. Do you remember what day it was or date?

A. It was the first date, the 8th. It was Good Friday.

Q. That is what you have just told us, but after that time did you ever speak to him again?

A. Yes, he brought Mr. Thorn, I believe it was the Saturday after Good Friday, brought Mr. Thorn over to the City Jail.

Q. Did they say anything to you about your right to an attorney or right to self-incrimination or anything like that?

A. No, they didn't.

Q. At that time did Mr. Thorn ask you if you had an attorney?

A. Yes, he did.

Q. Did you tell him Al Harris?

A. Yes, I did.

Q. Did either Mr. Farmer, Officer Farmer or Inspector Thorn say they had spoken to Mr. Harris?

A. Officer Farmer told me he would get in touch with Al Harris.

Q. They didn't advise you of any of your rights then on this Saturday?

[fol. 56] A. No, they didn't.

Q. Did they make any statements to you concerning the State Western Union charge?

A. Yes, they did.

Q. Was that on this Saturday?

A. It was on that Saturday.

Q. Who said it?

A. Well, Officer Farmer and Mr. Thorn, both of them was talking to me, and they told me, said, "We know you have this charge, this Western Union charge on you, and that you have a prior conviction of a robbery." He said, "You know, if you would take this into court, and if you would lose, that you would have to go and do some time, and then come back, and you would still have this postal robbery on you, and you would have to be facing this whenever you get through with your time." Then they said that—Mr. Thorn, Officer Farmer, said, "We could get this State charge dropped and bring you in the Federal court," and said, "You can snatch ten years and go with us, and that if you would take this, this will be better for you than go ahead on and try and fight this Western Union case and have to do time on both of them."

So, due to the fact that I had been convicted once on a robbery, well, when they offered to make this deal with [fol. 57] me, that I could come in Federal court and get ten years on it, they said I was subject to making probation on it, because I was a first defendant, that I hadn't been in any Federal court before. Well, due to these circumstances, this is the reason why that I told Officer Farmer and Mr. Thorn that I would come in Federal court and plead guilty to on this charge.

Q. All right, when you and he had this—when you and they had the discussion about the State charge, and they told you what you just stated, had you told them anything about the robbery other than just denying it, up to that time?

A. I hadn't told them nothing. I denied it.

Q. Then it was after this discussion about the State charge when you admitted this robbery?

A. Yes.

Q. And that was the Saturday following this Friday, is that right?

A. Right.

Q. All right. Did you ever have any discussions with him after that time, Farmer or Thorn?

A. No, I didn't. I take that back. Yes, I did.

Q. When was that, do you know?

A. Well, I talked to Thorn—I talked to Officer Farmer [fol. 58] first.

Q. Can you tell us about when that was, do you know?

A. This was on the date that they brought me over, this Good Friday I talked to Oscar Farmer first, and he brought up this deal to me, and so——

The Court: Let me get myself straight. On this Good Friday you talked to Farmer and then you talked to Thorn?

The Witness: No, I talked to Mr. Farmer first.

The Court: Did you talk to Thorn later that day?

The Witness: No, I didn't see Thorn 'til Saturday.

The Court: The next day?

The Witness: Right.

Q. (By Mr. Cooper) All right, we have been through that. What I meant was, I think you said you spoke to Thorn and Farmer after that Saturday?

A. I spoke to Thorn and Oscar Farmer that Saturday.

Q. We are over that Saturday.

A. Yes.

Q. How about after that, did you ever talk to them again about that?

A. Well, I didn't see them—well, Mr. Thorn came over and talked to me, but—Mr. Thorn came over and talked to me.

[fol. 59] Q. Mr. Thorn came. When was this other time that you say you talked to Thorn after this Saturday? What day was that on?

A. I don't know the date.

Q. If Thorn stated, I think, it was April 11th, would that be right?

A. It's possible.

Q. Well, was it just a couple days after that Saturday?

A. Yes.

Q. And you and Thorn were alone when you discussed it?

A. Yes.

Q. At that time had you been brought to the U.S. Commissioner's office yet?

A. No.

Q. Did Thorn advise you of any of your rights prior to talking to you on April 11th?

A. No, he didn't.

Q. Did he tell you you had a right to an attorney?

A. Well, he knew I had an attorney but he didn't advise me to any of my rights; just kept saying, "I'll talk to Al Harris and see what we can do for you."

Q. When were you taken to the U.S. Commissioner's office?

A. Sometime in May.

Q. Was it in May?

[fol. 60] A. I believe it was. It was around the first part of May.

Q. Was Al Harris ever present when you ever had any conversations with either Farmer or Thorn concerning this charge?

A. Well, Al Harris never was present.

Q. He was never present at any of those times?

A. No.

Q. After you first denied any involvement in this on Friday, did you tell Farmer or Thorn that you didn't want to talk about it any more?

A. Yes, I did.

Q. Did they continue to interrogate you, though?

A. Yes, they did.

Mr. Cooper: I have nothing further, your Honor.

By Mr. Reardon:

Q. You heard Detective Farmer testify here prior to your taking the witness stand, is that correct?

A. Right.

Q. And he says that in his testimony that on the—April the 8th, that you had given him some confidential information.

A. Right.

Q. Would you tell us about that?

[fol. 61] A. Well, Mr. Farmer, he asked me about Mr. Bruton, William Bruton. He said that he had had information that we were the ones that had robbed this sub-post office and he asked me to tell them about Bruton. Well,

I told them that I didn't know nothing about it, and at the time, well, Oscar Farmer said, "Well, we have information, you don't have to tell us," said, "we have information, people have told us that you are the one and we are going to pick Bruton back up on this charge."

Q. Were you permitted to make a phone call?

A. Yes, I was.

Q. To whom—during this interrogation did you phone anyone in particular?

A. Yes, I did.

Q. Who did you phone?

A. I phoned a young lady by the name of Rose Rivers.

Q. Had she had any difficulty with Bruton?

A. Well, they had a misunderstanding.

Q. The question I want to ask is the confidential information, did you give to Detective Farmer on April 8th of this year the confidential information that he has determined to be confidential implicating Bruton?

A. Yes, I did.

Q. Why?

[fols. 62-65] A. Well, it was because of the fact that Mr. Bruton was supposed to have had—done something to this lady friend of mine, and through this, well, I got an attitude at him, and so Mr. Thorn—Mr. Farmer interrogating me, kept interrogating, so I went on and said that Bruton was with me.

Q. Is that accurate?

A. I didn't hear you?

Q. Is that accurate or were you mad at Bruton at the time?

A. Yes.

Q. You made the phone call to the girl?

A. Yes.

Q. And where were you permitted to make that phone call from the police department?

A. From Oscar Farmer's office.

Q. And Detective Farmer permitted you to do it?

A. Yes, he did.

Q. How long did you talk to the girl?

A. Talked to her for about ten minutes.

Q. Were you mad at Bruton at the time?

A. Yes.

* * * * * * *

[fol. 66] Q. And the Commissioner advised you of your rights to have a lawyer and all that, didn't he?

A. Yes, he did.

Q. And the next day you saw Thorn?

A. Right.

Q. And did Thorn at that time tell you that you had a right to have a lawyer, the same thing the Commissioner had told you?

A. Well, no, he didn't say anything to me. He asked me about Bruton.

Q. Did he advise you of any rights that you may have had?

A. No, he didn't.

Q. Prior to his starting asking you about Bruton?

A. No, he didn't.

Q. He did not, he just started questioning you?

A. Right.

Mr. Koster: I have no further questions.

* * * * * * *

[fol. 67] Mr. Cooper: Mr. Koster, may it be stipulated that the first time he was brought before the U. S. Commissioner then was on May 4th, 1966?

Mr. Koster: May 3rd, my information.

Mr. Cooper: May 3rd, 1966? Won't the court file show that?

Mr. Koster: It should.

Mr. Cooper: May we look at it?

The Court: You may. It won't show it, I don't think.

Mr. Cooper: It won't?

The Court: They don't put it in those files, gentlemen, their record. That would show in their record when it is.

Mr. Koster: May 3rd is the date on the sheet that I have.

Mr. Cooper: May 3, 1966. All right. It may be stipulated then it was May 3, 1966, he was first brought to the Commissioner, is that right, Mr. Koster?

Mr. Koster: Correct.

Mr. Cooper: I have nothing further.

The Court: What about the date of your warrant?

Mr. Koster: The date of the warrant, I believe, was April 11th, and it was not executed until May 3rd because of the State charges, he was being held as a State prisoner.

[fols. 68-73] April 11th.

The Court: But not executed because he was a State prisoner until they dropped the State charges on May 2nd?

Mr. Koster: That's right, your Honor.

* * * * * * *

[fol. 74] Mr. Reardon: If I may raise just briefly the question, I also feel that the statements should be suppressed. I think it is an unhealthy situation where a man has an [fols. 75-76] attorney, charged in the State court, with an armed robbery, and yet he's still prey to any investigations that you want to conduct without—around behind the lawyer's back, or around him, until after a statement is made.

Also, I think, and I would like to highlight this aspect of Evans' testimony, the threat or the statement or the suggestion that he would have to serve a good deal of time in the State of Missouri because he has a prior conviction, prior to the Western Union robbery, and that after serving that period of time the inference is given him that then he would be turned over to the Federal authorities. He doesn't come here lily white. He admits a prior conviction, but he said he had never been to the Federal courts before and the indication is given him that he can receive before this court a ten-year sentence, this would influence an individual with a prior conviction awaiting trial for an armed robbery in the State court. This type of a promise, behind or around lawyers, I think leads to what should be here suppressed admissions that are made sometime after, a good while after he is being held under State charges. I think that it is an unhealthy practice.

* * * * * * *

[fol. 77] Mr. Koster: The Westover vs. United States, that portion of the decision deals with something very close to this, that is the one out in Kansas City, and in that situation the Court just says this, in very simple language: "We do not suggest that law enforcement authorities are precluded from questioning any individual who has been held for a period of time by other authorities and interrogated them without appropriate warning. A different case would be presented if the accused were taken into custody by this second authority, removed both in time

and place," which we have here, "from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them."

The Westover case, they had—the police had him in custody in Kansas City, the local authorities, they held him; when they got finished interrogating him the F. B. I. [fol. 78] came right in. The police had never given him any proper advice. The F. B. I. did give what the Supreme Court said was proper advice, but they said it's all one interrogation, there's no separation in time or place, and they knocked out the F. B. I. interrogation.

Here we have three days later in a different place, and he's adequately informed by a different authority. I think that this particular statement of the Supreme Court in the Westover opinion fits our situation as to April 11th and certainly as to May 4th, after he's been before the Commissioner.

* * * * * * *

[fol. 79] The Court: And insofar as anything he may have told Mr. Farmer before that date, I'm not ruling on that [fols. 80-87] because it's not involved in here, but insofar as what he said, on whatever the date that it is, in the presence of Thorn and Farmer, when Thorn questioned him, and on the time that he talked to him right after he was before the Commissioner, I think if the Government wants to refer to it in their opening statement the Court will permit him to do so.

* * * * * * *

[fol. 88] Mr. Koster: Your Honor, while we're waiting for Miss Miller to come in, Plaintiff's Exhibit 1, this is by a [fol. 89] stipulation between the parties, Mr. Reardon and Mr. Cooper, Plaintiff's Exhibit No. 1 may be introduced as an agreement showing that Paul J. Robinson is appointed contractor for a Post Office Contract Station No. 7 located at the Robinson Jewelry Company at 3809 South Kingshighway, and this appointment as a contractor is signed by Paul J. Robinson on the 1st of January, 1963.

The Court: And is in force and effect——

Mr. Koster: And is in force and effect today, your Honor. And further, Plaintiff's Exhibit No. 2 may be introduced

by agreement of the parties which shows that Shirley Miller was appointed to assist at Contract Station No. 7 on February 5, 1964, as a postal helper and entitled to handle postal funds, and that this agreement finding Shirley Miller to assist at Contract Station No. 7 is still in effect.

The Court: Very well.

(Which said Plaintiff's Exhibits 1 and 2 were received in evidence.)

SHIRLEY MILLER, being produced, sworn and examined in behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Koster:

[fols. 90-91] Q. Would you state your name, please?

A. Shirley Miller.

The Court: Young lady, would you speak up so the gentleman down on the end will have no trouble hearing you?

Q. (By Mr. Koster) Where do you live, Miss Miller?

A. 5025 South Kingshighway.

Q. Are you employed?

A. Yes.

Q. Where are you employed?

A. Robinson Jewelry Company.

Q. Where is Robinson Jewelry Company located?

A. 3809 South Kingshighway.

Q. How long have you been employed there?

A. About eight years.

Q. Is part of your employment there to assist in the running of the postal contract station?

A. Yes.

Q. Now, Miss Miller, were you working on April 16, 1965?

A. Yes.

Q. I want to direct your attention to about 2:00 o'clock or 2:30 in the afternoon of that day. Where were you at that time?

A. Working at the desk.

* * * * * * *

[fol. 92] Q. Does it indicate on there or can you indicate on there where you were seated about 2:30 on the afternoon of April 16th, 1965?

A. At the desk.

Q. Show me where that is. Would you point to it?

A. Right here (indicating).

Q. The desk is pictured on the right side of the picture, is that correct?

A. Yes.

Q. Now, when you were seated at that desk what happened? Would you tell me what happened at that time?

A. I was entering things into the book and the door opened and I looked up and there was two young men came in.

Q. Were these men white or Negroes?

A. They were Negroes.

Q. Did they come in together or one at a time?

A. Yes, they were together.

Q. What did you do then?

A. I went out to wait on them.

[fol. 93] Q. And so you went to the front of the store?

A. Yes.

Q. What happened after that?

A. One wanted to look at engagement rings.

Q. Which one wanted to look at engagement rings? Have you since learned his name?

A. Evans.

Q. Do you see him now, please?

A. He's right there, yes (indicating).

Q. Which one is he?

A. This gentleman right over here (indicating).

Q. The gentleman in the darker suit?

A. Yes.

Mr. Koster: May the record show the witness is indicating the defendant Evans?

The Court: The record may so show.

Q. (By Mr. Koster) What did Evans say?

A. He said he wanted to look at engagement rings.

Q. What did you do?

A. I showed him the one I had on hand and told him he would have to make an appointment to see more.

Q. More rings or more diamonds?

A. More diamonds.

Q. What happened?

[fol. 94] A. He said he didn't know when he would be in the neighborhood or when he would be able to come back.

Q. Had the second man said anything up to this time?

A. No, he just started to kid him then about being engaged. He said his troubles would first start now.

Q. Then what happened?

A. Then he said he wanted to look at some watches.

Q. And then what happened?

A. So he walked down toward the watch case.

Q. Is that toward the rear of the store?

A. Yes.

Q. What happened then?

A. I started down to show him some watches and the other man said something to me and I turned to answer him. When I turned around he was pulling a gun.

Q. Who was pulling a gun?

A. Evans.

Q. The second man said something to you that distracted your attention, is that what you are saying?

A. That's right.

Q. Then he turned back to Evans and he pulled the gun?

A. Yes.

Q. Where was he then?

A. He was standing over the coin case.

[fol. 95] Q. Was that in the front or rear of the store?

A. Toward the rear of the store.

Q. But still the customer portion proper of the store?

A. Yes.

Q. What happened when he pulled the gun, what did he say?

A. He pointed it, there's a little window, Mr. Robinson can look out, he pointed——

Q. Can you see that window on that picture?

A. Faintly.

Q. I'm going to show you Plaintiff's Exhibit 4 and ask you if you can see it any better on this one?

A. Yes.

Q. Would you indicate where it is?

A. It's right above Mr. Robinson's desk.

Q. Has he got kind of a workbench there?

A. Workbench, yes.

Q. How big is that window approximately?
A. Oh, I don't know.
Q. Can you show us with your hand?
A. Oh, it's about this wide, about this high (indicating).
Q. What did Evans do when he pulled the gun?
A. He pointed it through the glass at Mr. Robinson, [fol. 96] told him it was a holdup.
Q. Then what happened?
A. Mr. Robinson was on a rolling chair, and he rolled out of his sight.
Q. And then what did Evans do?
A. He tore the gate off and came around the back.
Q. The gate separates the customer portion of the store and your part?
A. That's right.
Q. And when he went around the back, what did you do?
A. I started to walk behind him.
Q. Behind Evans?
A. Yes.
Q. What happened then?
A. The second man put a gun to my face and told me to get back out in the store.
Q. Stay in front?
A. Yes.
Q. Were you facing the second man then?
A. Yes.
Q. Do you see him in the courtroom now?
A. Yes, I do.
Q. Would you indicate which one he is?
A. He's right over there (indicating).
[fol. 97] Q. Are you indicating the gentleman in the lighter gray suit and red tie?
A. Yes.
Q. Have you since learned his name?
A. Bruton, I think.

Mr. Koster: May the record show she's indicated the defendant Bruton, your Honor?
The Court: The record may so show.

Q. (By Mr. Koster) After Mr. Bruton put the gun on you what did you do?
A. He told me to stand there and I did.
Q. Were you facing him at that time?

A. Yes.
Q. How long did you remain there?
A. Just a minute or two.
Q. In the front of the store?
A. That's right.
Q. Could you see what was going on in the rear?
A. No.
Q. All right, what was the next thing that happened to you, Miss Miller?
A. He told me to go back in the store, in the back part of the store.
Q. To the work portion of the store, is that correct?
[fol. 98] A. Yes.
Q. And did you go?
A. Yes.
Q. What happened then?
A. He told me to—to get on the floor.
Q. Who told you to get on the floor?
A. Bruton.
Q. When you came to the rear of the store, to the back portion, what was the first thing you saw? What did you see?
A. Evans was going through the safe.
Q. How many safes do you have?
A. Two.
Q. Which one was he going through?
A. The one on the west wall.
Q. Is that the bigger or smaller safe?
A. That is the larger safe.
Q. They are two different sizes?
A. Yes.
Q. And where was Mr. Robinson when he came to the back of the store?
A. He was on the floor.
Q. How was he facing on the floor?
A. He was facing south.
[fol. 99] Q. Was he face up or face down?
A. Face down.
Q. Could you see his eyes?
A. No.
Q. What happened when you got to the rear of the store?
A. He told me to lay down on the floor, too.
Q. Did you lie down on the floor?

A. Yes.
Q. Which direction were you facing?
A. I was facing north.
Q. Were you face up or face down?
A. Face down.
Q. What happened after you were on the floor?
A. I heard the breaking of glass and I heard the cash register open and they took money out of it, I could hear the coins jingle.
Q. What?
A. I could hear the coins jingle.
Q. What glass was broken? Did you later discover what glass was broken?
A. In the two showcases for the rings and for the watches.
Q. After that happened what is the next thing that [fol. 100] you recall?
A. Then they tied us up.
Q. When you say "tied us up" how did they tie you?
A. They used wire on our legs and tape on our hands and arms.
Q. What position did they tie you in?
A. We were on the floor in a lying position.
Q. During the time that you were on the floor did you ever put your head up?
A. Yes.
Q. Did you ever see either one of the two men in the rear?
A. Yes.
Q. Which man remained in the rear?
A. Evans.
Q. And this glass breaking was going on in the front, is that right?
A. That's right.
Q. What happened when you put your head up?
A. Evans came over and told me to put my head down.
Q. Did he do anything with the pistol when he told you to put your head down?
A. He had it in his hand.
Q. Pardon?
[fol. 101] A. He had it in his hand.
Q. Did he point that at you?
A. Yes.

Q. How many times did that happen?
A. Twice.
Q. Twice during this you put your head up?
A. Yes.
Q. After you were tied up what happened?
A. They told us they were going to leave and we should stay there for about five minutes.
Q. And then what happened?
A. So then they left.
Q. Which door did they go out?
A. The back.
Q. They left from the rear and went out the back door. Now, what type of gun did Bruton have?
A. It was a revolver.
Q. He is the first man that put the gun on you?
A. Put the gun on me, yes, sir.
Q. What color was it do, you recall?
A. Black.
Q. Do you recall what kind of a handle it had or anything of that?
A. I couldn't see it.
[fol. 102] Q. You couldn't see the handle. Was it a large or small revolver?
A. Small.

* * * * * * *

Q. Now, prior to the time that they came in, Miss Miller, had you handled any postal funds that day?
A. Yes, I did.
Q. Would you expain what you had done with them?
[fol. 103] A. I took the money out of the cash drawer and put it in the safe, in a little small safe.
Q. Where is this cash drawer located?
A. That was on the west—on the west wall.
Q. In Plaintiff's Exhibit 6 do you see the cash drawer in there?
A. Yes.
Q. Does it show on that picture where it is?
A. Right here (indicating).
Q. What did you do with the cash you took out of there?
A. Put it in a little safe on the wall.
Q. Is that safe depicted in that picture?

A. Yes, it is.

Q. Would you show us which safe it is?

A. This one here (indicating).

Q. How much cash did you remove from the cash drawer, Miss Miller?

A. Thirty dollars.

Q. Thirty dollars in currency?

A. Yes.

Q. Was there any silver?

A. No, all bills.

Q. Where did you put it in the safe?

[fols. 104-105] A. I just put it in the bottom part of the safe.

Q. Was it in open view there if you open the safe?

A. If you opened it, yes.

Q. Now, was the safe drawer open or closed when these two men came in?

A. It was ajar.

Q. It was not locked?

A. No.

Q. After they left did you check that safe?

A. Yes.

Q. Was the money still there?

A. No.

Q. The thirty dollars was gone?

A. Yes.

Q. Do you keep the Government funds separate from the funds of the Robinson Jewelry Company?

A. Yes, we do.

Q. And this thirty dollars was Government funds?

A. That's right.

* * * * * * *

[fols. 106-107] Q. Now, when was the next time you saw him after the holdup, Miss Miller?

A. In the City Jail.

Q. In the City Jail or at a show-up?

A. In a show-up.

Q. Where did that take place?

A. The City Jail.

Q. Approximately when was it, do you recall?

A. It was about April the 8th, if I'm not mistaken, of this year.

Q. Was that any particular day?

A. Good Friday. It was a year to the day that we were held up.

Q. You were held up on Good Friday of '65?

A. That's right.

Q. And this was Good Friday of '66?

A. That's right.

* * * * * * *

[fol. 108] Q. Now, I want to direct your attention to April 25th, 1966. Did you have occasion to go to a show-up on that day, too, couple of weeks later after you saw Evans?

A. Yes.

Q. How many men were in that show-up?

A. I believe there was four in that one.

[fol. 109] Q. Did Mr. Robinson go with you that day?

A. No.

Q. Where did that show-up take place?

A. At Police Headquarters.

Q. In the same physical set-up?

A. Yes.

Q. It's a two-way mirror?

A. Yes.

Q. Did you see anybody in that show-up that you recognized?

A. Yes, I did.

Q. Who was that?

A. Bruton.

Q. Miss Miller, had you seen Bruton between April of '65 and when you identified him in April of '66 at the show-up?

A. One time.

Q. And approximately when was that, do you recall?

A. November or December of '65.

Q. And under what circumstances did you see him that time?

A. He was in a show-up.

Q. Where?

A. At the Police Headquarters.

[fol. 110] Q. Did you pick him out as the man who participated in the robbery on that date?

A. No, I thought maybe he was but I wasn't sure.

Q. What was changed about him at the time of the holdup and the time you saw him in November or December of 1965?

A. His eye had changed quite a bit.

Q. Which eye are talking about?

A. The right eye.

Q. Was there something noticeable about the eye at the time of the holdup?

A. Yes.

Q. What was that?

A. It dropped on one side and it had kind of a milky look and there was blood spots in it.

Q. The right eye?

A. That's right.

Q. Did you observe that at the time of the holdup?

A. Yes.

Q. When you saw him in the show-up in November, December of '65, had the condition of the eye changed at all?

A. Yes, it had.

Q. In what respect?

[fol. 111] A. It was cleared up a lot better.

Q. Well, in what way had it cleared up?

A. It wasn't as milky looking and the blood spots were gone.

Q. Did the eye seem to have some defect in it?

A. It had some but it wasn't as bad.

Q. All right, now, when you saw him in April of '66, this past April, was there any change in the condition of the eye at that time?

A. It looked like the one when he held us up.

Q. It was worse again?

A. Yes.

Q. The condition, is that correct?

A. That's right.

Q. Now, was there any other change in his condition between November or December show-up of 1965 and when you saw him at the show-up in April of 1966, other than the eye which you have described?

A. His face looked longer to me.

Q. When?

A. The first time.

Q. In November or December?

A. Yes.

Q. And was there any change in his appearance in April [fol. 112] as to his face?

A. Yes, he had a hat on that day. He had a hat on that day and it changed the appearance of his face.

Q. In what way did it change it as far as you are concerned?

A. It made it look shorter and stouter.

Q. Had he been wearing a hat or was he bareheaded at the time of the holdup?

A. He wore a cap.

Q. He wore a cap. Was it the same type of cap that he had in the show-up?

A. No.

Q. But just some head covering?

A. That's right.

Q. Was there anything else that changed between November or December of '65 and of this year?

A. His skin looked a little too light in November.

Q. It looked lighter?

A. Yes.

Q. What about when you saw him in April?

A. It looked about the same color then.

Q. Was there anything different in the color of the clothing he had on in the two show-ups?

A. Yes.

[fols. 113-124] Q. Would you tell us what that was?

A. When he held us up the coloring was kind of a brown, tan, and when I saw him in November it was a darker color, more of an olive color.

Q. When you saw him in April what was the color of the clothing?

A. Tan.

Q. It was closer to the——

A. Same color.

Q. At the time of the holdup?

A. Yes.

Q. Wasn't the same clothing?

A. No.

Q. Miss Miller, are you absolutely sure this is the man here?

A. Yes.

• • • • • • •

[fol. 125] By Mr. Reardon:

Q. Miss Miller, did anyone accompany you or did Mr. [fol. 126-132] Robinson accompany you when you went to the show-up in either November or December of last year?

A. Mr. Robinson was with me.

Q. The two of you had gone. What police officers escorted you on that occasion?

A. Same ones.

Q. Same ones, that is Detective Farmer and Bradley, is that correct?

A. And Bradley, yes.

Q. How many individuals were in that particular line-up?

A. That was three.

Q. Pardon me?

A. Three.

Q. Three. Did you view that particuar show-up separately with Mr.—or together with Mr. Robinson?

A. Separately.

Q. And on that occasion you looked at the three individuals; is that correct?

A. Yes.

Q. And you failed at that time to identify anyone, is that correct?

A. That's right.

* * * * * * *

[fol. 133] Q. And so that you weren't sure at the time you identified him, picked him out in the April 25th line-up, that you had seen him in November or December?

A. I wasn't positive, no.

Q. And you talked with the officers about that?

A. Yes.

Q. Now, at the time that you viewed Mr. Bruton in the November line-up, November or December line-up, you were not sure that he was the individual that had been in the Robinson Jewelry Store on April 16th of 1965?

A. I thought it was the man but I wasn't positive.

Q. All right, and you weren't positive on April 25th that he was the same man that had been in a line-up in November or December of last year?

A. I thought it was.

Q. Now, this second person involved in the robbery, the

one that you didn't wait on, how much time did you spend out in the working portion of the jewelry store with that individual?

A. About two minutes, three minutes, something like that.

Q. Is this while the first person was in the rear with Mr. Robinson?

[fols. 134-141] A. That's right.

Q. Were you looking to the rear concerned about Mr. Robinson at that time?

A. Not all the time, no.

Q. A portion of the time?

A. Yes.

* * * * * * *

[fol. 142] Q. Now, while Evans was in the rear of the store and Bruton held you in the front, you said that was two or three minutes?

A. Yes.

Q. Did you look to the rear of the store during those two or three minutes?

A. Yes.

Q. Where did you look besides the rear of the store?

A. At Bruton.

Q. How close were you to him?

A. About as close as I am to this lady here (indicating).

Q. Were you standing?

[fols. 143-145] A. Face to face.

Q. He was facing you?

A. Yes.

Q. Where did he have the pistol?

A. Between us.

Q. Were you looking at the pistol or his face?

A. At both.

Q. You actually looked him straight in the face?

A. Yes, I did.

* * * * * * *

[fol. 146] PAUL J. ROBINSON, being produced, sworn and examined in behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Koster:

Q. Would you state your name, please?
A. Paul J. Robinson.
Q. What is your business or occupation, Mr. Robinson?
A. Watchmaker and jeweler.
Q. Where is your store located?
[fols. 147-162] A. 3809 South Kingshighway.
Q. Aside from running a jewelry store at that location are you a contract operator for the St. Louis Post Office?
A. I am Contract Station No. 7 for the post office, yes.
Q. How long have you been operating in that capacity?
A. Oh, going on three years.
Q. And you are still a contract station operator at this time?
A. Yes, sir.
Q. Now, Mr. Robinson, I want to direct your attention to about 2:30 in the afternoon on April 16, 1965. Where were you at that time?
A. I was at my store.

* * * * * * *

[fol. 163] Q. And you cannot tell the court and jury that certainly that this defendant over here, Mr. Bruton, committed the robbery?
A. No, I can't because I didn't see him.
Mr. Reardon: Thank you.

* * * * * * *

[fol. 164] GEORGE L. MASON, being produced, sworn and examined of the plaintiff, testified as follows:

Direct examination.

By Mr. Koster:

Q. Would you state your name, please?
A. George L. Mason.

Q. What is your business or occupation, Mr. Mason?
A. Finance examiner, post office.
Q. Mr. Mason, did you have occasion to go to Contract Station No. 7, which is located at 3809 South Kingshighway, on April 16, 1965?
A. I did.
Q. Did you perform an audit of their post office receipts and what-have-you out there?
A. I did.
Q. Do you have a copy of the audit you performed?
A. Yes.

(Plaintiff's Exhibit 7 was marked for indentification.)

Q. Mr. Mason, I'm going to hand you what has been marked Plaintiff's Exhibit No. 7 and ask you what that is, sir.
A. It's Form 1947, which is an examination of contract station or branch.
[fols. 165-166] Q. Does that reflect where that examination was made and what date?
A. On the back there is a notation, "Audit made following robbery." The date on it is 4/16/65.
Q. Now, did you personally perform that audit?
A. Yes, sir.
Q. Did you determine if anything was missing from the post office receipts down there?
A. Yes, sir.
Q. How much was missing, sir?
A. Thirty dollars thirty-four cents.
Q. Is that as of April 16th? What time did you perform that audit?
A. We have got a time on here of 6:45 p.m.
Q. April 16, 1965?
A. Right.
Q. Thirty some-odd dollars?
A. Thirty dollars thirty-four cents.

• • • • • • •

[fol. 167] J. B. THORN, being produced, sworn and examined in behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Koster:

Q. Would you state your name, please?
A. J. B. Thorn.
Q. What is your business or occupation, Mr. Thorn?
A. I am a United States Postal Inspector.
Q. How long have you been so employed?
A. Ten years.
Q. Mr. Thorn, did you have occasion to investigate the robbery of Contract Station No. 7, the Robinson Jewelry Company?
A. Yes, sir, I did.
Q. In connection with that investigation, Mr. Thorn, I want to direct your attention to April 11, 1966. Did you have occasion to go to the St. Louis City Jail on that day?
A. Yes, sir, I did.
Q. Approximately what time did you go there?
A. It was after lunch, between 1:00—probably between 1:00 and 2:00 o'clock.
Q. Did you go with anyone else?
A. I did.
[fol. 168] Q. Who was that?
A. Detective Oscar Farmer of the St. Louis Metropolitan Police Department.
Q. When you got to the City Jail who did you see?
A. Saw William Evans.
Q. Is that the gentleman seated here in the dark suit?
A. Yes, sir.
Q. This individual here (indicating)?
A. This one sitting on the left of the table.
Q. Did you talk to William Evans at the City Jail that day?
A. I did.
Q. Did you ask him some questions?
A. I did.
Q. Did he give you some answers?
A. He gave me some answers.
Q. Did you question him about the Robinson Jewelry Contract Station No. 7 holdup?
A. I did.

Q. Will you tell me what William Evans said on April 11th?

Mr. Cooper: I object, your Honor, on the grounds that no foundation has been laid.

The Court: Lay your foundation.

[fol. 169] Q. (By Mr. Koster) Did you advise William Evans, give him any advice before you started this questioning?

A. I did.

Q. Will you tell us what you told him?

A. I first introduced myself as being a postal inspector. I then advised him of his rights, that he was a suspect in the armed robbery of Contract Station No. 7, that he was not required to make any statements, any statements that he did make could be used against him in a court of law, that he had a right to an attorney.

Q. Did you ask him if he had an attorney?

A. I did.

Q. What did he say to that, Mr. Thorn?

A. He told me he had one.

Q. Did he say what his attorney's name was?

A. He told me his attorney's name was Al Harris.

Q. Did you ask him or did you discuss his attorney Al Harris any further at that point?

A. He advised me or told me that Mr. Harris was coming to see him on that day.

Q. Later that afternoon?

A. Right.

Q. Did you question or did you ask him anything when he told you that?

[fol. 170] A. I asked him, I told him that I wanted to question him, would he prefer that I wait until Mr. Harris arrived?

Q. What did he say?

A. He told me no, that we could talk and he would tell Mr. Harris when he got there.

Q. Then you proceeded to question him about this hold-up?

A. That's right.

Q. Would you tell me what Evans said on April 11th?

Mr. Cooper: If the Court please, may we approach the bench for just a minute.

The Court: You can state just what you have to say from there.

Mr. Cooper: Again I will move formally to suppress any evidence that this man may testify to on the grounds that I set forth in my formal motion to suppress the evidence.

The Court: In order that the record may be straight, you did not present your formal motion. If you want to present it, you can present it. We had the matter this morning, we went into it, the jury is not concerned with it, that you're relying upon the testimony that we heard this morning.

Mr. Cooper: Yes, I am, this morning.

[fol. 171] The Court: Be overruled. The record can show that the formal motion is overruled, if you want it so considered.

Mr. Cooper: Yes, and also that this matter that was heard this morning outside of the hearing of the jury was on my motion to suppress this evidence by Mr. Thorn, is that correct? See, formally I didn't move that way this morning.

The Court: I understand you didn't. No, I'm not going to make your record for you now. We took it up, the record will show what we took it up on this morning. It will be based upon that record, but taking that testimony this morning with which the jury is not concerned at this particular point and considering the motion that is filed, the court will overrule it.

Q. (By Mr. Koster) Will you tell me what William Evans said on April 11th at the City Jail in your presence?

A. He stated that he participated in the armed robbery of the Robinson Jewelry Store and Contract Station No. 7.

Q. Did he say what he did with the jewelry or the money which was obtained?

A. Not at that time, sir.

Q. Did he say what happened to the guns which were used?

[fol. 172] A. No, sir.

Q. Did he say if he was alone or if anyone was with him?

A. He said there was someone with him.

Q. Did he name that individual?

A. No, sir.

Q. Is that all the information that he gave you on April 11th?

A. On that date, yes, sir.

Q. Now, did you talk to him again concerning this robbery?

A. Yes, sir.

Q. When was the next time you talked with him?

A. I believe the date was May 4th.

Q. Where did that conversation take place?

A. In the St. Louis City Jail.

Q. Was anyone else present at that time?

A. No, sir.

Q. And did you ask him some questions concerning this robbery?

A. I did.

Q. Did he give you some answers?

A. He did.

Q. Would you tell me what he said?

[fols. 173-176] A. He again admitted his participation in the robbery. He described, not fully, but in some detail the robbery.

Q. Tell me what he said, the best you can recall.

A. He stated that he and Bruton were driving around, they went by the jewelry store and thought that this would be a good one. They went into the jewelry store and looked around. After being in for a little while they went ahead with the armed robbery, the victims were tied up, the phone was disconnected, they left the building by the back door, went down the alley, crossed Kingshighway to the Famous-Barr parking lot, got into their automobile, and drove north on Kingshighway.

Q. At this time did Evans tell you what he had done with the guns in that robbery?

A. He did not.

Q. Did he tell you what happened to the jewelry or the money?

A. He told me that the jewelry was disposed of in St. Louis, nothing specific.

Q. Did you question him as to——

A. I did.

Q. And he would give you no more specifics than that?

A. That's right.

* * * * * * *

[fols. 177-183] Q. And did you tell him that anything he said would in fact be used against him?

A. I told him it could be used against him.

Q. You didn't tell him it would be?

A. No, sir, I said it could be.

[fol. 184] Q. Well, what did you say when you found out or what did you inform him when you found out that he did indeed have a State charge?

A. That there would be, the Federal charges, we could not proceed with Federal charges until some disposition was made of the State charges.

Q. In other words, that if he were to have to serve a good deal of time to the State of Missouri he would then be brought back to the Federal authorities at some date in the future, isn't that the inference he was given?

A. Not intentional, no.

Q. Would you have drawn that inference if you were in his shoes, that he would have to wait forever before he could, or wait a period of time before he could face a Federal charge?

A. I don't believe I can answer that, sir.

Q. Would that be a normal inference to draw, that he [fol. 185] would have to serve a State sentence perhaps before answering a Federal charge? Could you have drawn that inference from your conversation?

A. That is difficult. I suppose you could. I—I—I can't answer the question.

Q. Whose prisoner was he at that time on April 11th?

A. I beg your pardon?

Q. Whose prisoner was this man Evans?

A. The State.

Q. The State of Missouri?

A. Yes, sir.

Q. And what was he charged with there?

A. He was charged with an armed robbery.

Q. With an armed robbery, isn't that correct?

A. Yes, sir.

Q. Now, to be more specific and somewhat repetitious, he didn't mention the name of Bruton on that April 11th occasion, did he?

A. No, sir.

Q. Now, then, when you talked to him again on May 4th of this year, you recall that conversation?

A. Yes, sir.

Q. You testified concerning it?

A. Yes, sir.

[fol. 186] Q. What had become of the State charges at that time?

A. The State charges had been—the one State charge, I believe it's called nolle prossed.

Q. Nolle prossed?

A. Right.

Q. That is the same as dismissed?

A. Now, that I don't know.

Q. Well, I think we can agree that it was dismissed in favor of Federal prosecution, is that correct?

A. That's what the Circuit Attorney's office informed me.

Q. The Circuit Attorney for the State of Missouri, right?

A. Yes, sir.

Q. And you informed Mr. Evans of that undoubtedly on May the 4th?

A. I don't—I don't believe that I did.

Q. Would he have known that he was then no longer a prisoner of the State of Missouri?

A. Yes, sir.

Q. That he was a prisoner of the Federal Government?

A. Yes, sir.

Q. And he had been before the United States Commissioner, had he not?

[fol. 187] A. Yes, sir.

Q. And charged with this given offense?

A. Yes, sir.

Q. And the Government was not going to proceed until some disposition of the State charges?

A. They did not.

Q. Now, had you assisted him in any way in reaching a disposal of the State charges, discuss it with anyone?

A. I discussed it the first time with the Circuit Attorney's office.

Q. This is after the April 11th meeting?

A. Yes, sir, that is the only time, it was after——

Q. And then you did visit the Circuit Attorney's office?

A. I visited the Circuit Attorney's office, yes, sir.

Q. And indicated an interest on behalf of the Federal Government?

A. The Federal Government.

Q. And you do have the position that you wouldn't proceed so long as there was something pending in the State, is that correct?

A. Yes, sir.

Q. So then you went back and talked to him again after the purpose had been accomplished, the State charges disposed of?

A. I went back on May the 4th.

Q. Right, this is after he had become a Federal prisoner?

A. Yes, sir.

Q. After the Circuit Attorney had dismissed his charges?

A. Yes, sir.

Q. So that there is a dismissed robbery charge in the State of Missouri with regard to Evans at present?

A. Yes.

* * * * * * *

[fol. 191] OSCAR FARMER, being produced, sworn and examined in behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Koster:

Q. Would you state your name, please?

A. Oscar Farmer.

Q. What is your business or occupation, Mr. Farmer?

A. Detective, St. Louis Police Department.

Q. How long have you been on the St. Louis Police Department?

A. Nineteen years.

Q. Now, Detective Farmer, I want to direct your atten-
[fol. 192] tion to April 11th, 1966, to the early afternoon of April 11th, 1966. Did you have occasion to go to the City Jail that afternoon?

A. I did.

Q. Who were with you if anyone?

A. Thorn, agent——

Q. Thorn?

A. Thorn.

Q. The Postal Inspector who just testified here?
A. That's right.
Q. Who did you see in the City Jail that afternoon?
A. We saw Evans.
Q. Evans?
A. Yes.
Q. That is this young man seated here, is that correct?
A. That's right.
Q. Now, was he questioned in your presence by Thorn?
A. He was.
Q. Concerning a robbery that occurred at Robinson Jewelry Contract Station No. 7?
A. That's correct.
Q. Would you tell me what if anything Evans said about that robbery on the afternoon of April 11th, 1966?

[fol. 193] Mr. Cooper: Objection, no foundation laid.
The Court: Better lay your foundation.

Q. (By Mr. Koster) Detective Farmer, prior to the time he was questioned about this robbery did Agent Thorn tell him anything?
A. Yes, he did.
Q. What did he tell him?
A. He informed him that he didn't have to make a statement if he didn't want, he could wait for his lawyer or could——
Q. Excuse me.
A. He could acquire a lawyer before he made a statement if he wished to.
Q. What did Evans say when Thorn discussed an attorney with him?
A. He said that he had an attorney.
Q. Did he mention the man's name?
A. Yes, he did.
Q. What name did he give?
A. Al Harris.
Q. Did he say anything else about Mr. Harris at that time that you can recall?
A. Yes, he said that he had had Mr. Harris contracted and he was supposed to be there that day.
[fol. 194] Q. Did Thorn ask him if he wanted to wait for Harris?

A. Yes, he did.

Q. What did he say to that?

A. He said he just as well talk now, didn't see any use to wait.

Q. What?

A. He just as well talk to him now, didn't see any use of waiting for Mr. Harris, he would talk to him later.

Q. After this conversation then Thorn asked him about the robbery?

A. He did.

Q. What did Evans say at that time?

Mr. Cooper: Again I will object on the same grounds I raised this morning, anything that he relates would be inadmissible for the same grounds mentioned this morning.

The Court: Overruled, same ruling.

Q. (By Mr. Koster) What did Evans say to Thorn about the robbery at that point?

A. He admitted the robbery, told him that he was involved in a robbery.

Q. Did he go into any detail? Did he elaborate any more than that?

A. No, he didn't elaborate any further.

[fol. 195] Mr. Koster: I have no further questions.

Cross-examination.

By Mr. Cooper:

Q. Detective Farmer, prior to that day had you spoken to Mr. Evans?

A. Prior to the 11th?

Q. Yes, sir.

A. Yes.

Q. Had you spoken to him alone prior to April 11th?

A. No, I hadn't.

Q. Had you spoken to him in the presence of anyone prior to April 11th?

A. I had.

Q. What persons?

A. Detective Bradley.

Q. On what day had you spoken to him before April 11th?
A. On the 8th.
Q. And on that day did you also question him about this particular robbery?
A. I did.
Q. And on that day had you advised him of his rights in advance of talking to him?
A. No, I hadn't.
Q. You did not. Prior to April 11th, hadn't this man [fol. 196] denied any involvement in this robbery?
A. Yes, he had.
Q. In fact, you had spoken to him, if I'm not mistaken, twice before April 11th, and on both occasions he denied any involvement, is that right?
A. No, that is not right.
Q. Just once?
A. We hadn't questioned him relative to this particular robbery until then.
Q. Well, but before April 11th you had discussed this with him, this robbery with him, had you not?
A. Not this particular robbery.
Q. When you say he denied any involvement in this robbery, when are you saying he denied any involvement in this robbery?
A. That was on the 11th.
Q. Oh, on the 11th before talking to you and Thorn?
A. On the 8th, I beg your pardon. That was on the 8th.
Q. So you spoke to Mr. Evans on April 8th concerning this robbery too, didn't you?
A. Yes, on the 8th.
Q. And on that date he denied involvement in it, isn't that right?
A. That's right.
[fol. 197] Q. O. K. Now, incidentally, is there a reward out?
A. Yes.
Q. In this case?
A. Yes.
Q. There is?
A. Yes.
Q. Did you know that at the time you spoke to Mr. Evans on April 8th and on April 11th?
A. On the 11th, yes.

Q. On the 11th you knew about it?

A. Yes.

Q. How much is the reward?

A. I don't know.

Q. You don't know, but it is in money, is it not?

A. It is in money, yes.

Q. Now, on April 11th when you and Mr. Thorn questioned Mr. Evans, were you aware of a State charge involving a Western Union robbery?

A. I was.

Q. Was that brought into the discussion between you and Mr. Evans and Mr. Thorn?

A. Yes, it was.

Q. And was anything mentioned concerning some assistance by either you or Mr. Thorn to try to get that State [fols. 198-200] charge dropped?

A. On the 11th, no.

Q. Well, what was said concerning the State charge on that Western Union robbery on April 11th?

A. Mr. Thorn, I don't recall exact words, but it was to the effect that the State charge would have to be dropped before the Federals would take over.

Q. And is that the only thing that was mentioned concerning this?

A. Yes.

Q. And in fact the State charge was dropped, was it not, later on?

A. As I gather, yes, as I heard.

Q. Did you assist in having that State charge dropped?

A. No, I didn't.

Q. Did Mr. Evans at any time ever tell you he didn't want to talk about this?

A. No, he didn't.

Q. After he denied involvement in it on April 8th, why did you continue to talk to him after he denied involvement in it?

A. Well, he was shown up to the victims and they identified him, and then we talked to him again.

* * * * * * *

[fols. 201-234] MORNING SESSION, TUESDAY, JUNE 21, 1966

Pursuant to adjournment as aforesaid, at 10:00 o'clock a.m. of said Tuesday, June 21, 1966, the court met, present and presiding as before, and the trial continued as follows:

The Court: Gentlemen of the jury, I would like to say to you at this time yesterday there was testimony here with respect to a statement made by the defendant Evans to Thorn, the Postal Inspector, in the presence of, at least in one instance, in the presence of the Detective Farmer, and some reference to a second statement that was made only in the presence of Thorn. That statement, which I will instruct you about in the instructions, if used, can only be used against the defendant Evans. It is hearsay insofar as the defendant George William Bruton is concerned, and you are not to consider it in any respect with respect to the defendant Bruton, because insofar as he is concerned it is hearsay.

• • • • • • •

[fols. 235-243] (Whereupon, the court charged the jury as follows:)

[fol. 244] A confession is an admission by a defendant of all the material facts constituting the crime charged. The very nature of a confession requires that the circumstances surrounding it be subjected to careful scrutiny always, in order to determine surely whether the confession was voluntarily and intentionally made.

If the evidence in the case does not convince beyond a reasonable doubt that a confession was made voluntarily and intentionally, the jury should disregard it entirely. On [fol. 245] the other hand, if the evidence in the case does show beyond a reasonable doubt that a confession was in fact voluntarily and intentionally made by a defendant, the jury should consider it as evidence in the case against the defendant who voluntarily and intentionally made the confession.

A confession made outside of court by one defendant may not be considered as evidence against the other defendant, who was not present and in no way a party to the confession. Therefore, if you find that a confession was in fact voluntarily and intentionally made by the defendant Evans, you should consider it as evidence in the case against

Evans, but you must not consider it, and should disregard it, in considering the evidence in the case against the defendant Bruton.

You are instructed that if you find and believe from the evidence that the defendant, William James Evans, was not apprised of his right to remain silent prior to making any statements concerning the charges set out in the indictment, or if you find and believe from the evidence that the defendant, William James Evans, was not apprised of his right to have counsel at the time he made any such statements mentioned in the evidence, or if you find and believe from the evidence that the statements made by the defendant, William James Evans, wherein he admitted the charges set out in the indictment were only made in return for a promise made by J. B. Thorn, or if you find and believe from the evidence that defendant, William James [fols. 246-250] Evans, was interrogated by a J. B. Thorn or Oscar Farmer despite the fact that he did not voluntarily wish to make any statements to such men, or if you find and believe from the evidence that this defendant was not allowed to consult with his attorney nor permitted to have his attorney present at the time of making any of the statements mentioned in the evidence, then you must not consider the confession and other statements made by this defendant to Thorn and Farmer.

All evidence relating to any admission or incriminatory statement claimed to have been made by a defendant outside of court should be considered with caution and weighed with great care.

An admission or incriminatory statement made outside of court by one defendant may not be considered as evidence against another defendant not present when the statement was made.

It is your duty to give separate, personal consideration to the cause of each individual defendant. When you do so, you should analyze what the evidence shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant. Each defendant is entitled to have his case determined from his own acts and statements and the other evidence in the case which may be applicable to him.

* * * * * * *

[fol. 251] The Court: It's already been indicated that any [fol. 252] objection that either one of you make is applicable to both unless you want it to apply.

* * * * * * *

[fol. 253] The Court: Gentlemen, have you arrived at a verdict?

[fol. 254] The Foreman: We have.

The Court: Will you pass it forward?

The Clerk: (Reading)

"United States District Court Eastern Division,
Eastern District of Missouri

66 Cr 80 (1)

"United States of America, Plaintiff,

vs.

"William James Evans and George William Bruton,
Defendants.

"Verdict

"We, the jury in the above entitled cause, on the trial of the indictment herein, as to defendant, George William Bruton, find as follows:

"We find said defendant guilty as charged in the indictment herein."

(Signed) "Dan L. Black III, Foreman."

"Dated this 21st day of June, 1966."

The same style, same cause, second verdict form:

"We, the jury in the above entitled cause, on the trial of the indictment herein as to defendant, William James Evans, find as follows:

"We find said defendant guilty as charged in the indictment herein."

[fols. 255-256] (Signed) "Dan L. Black III, Foreman."

"Dated this 21st day of June, 1966."

The Court: Is that your verdict, gentlemen?

The Jury Members: Yes, sir.

• • • • • • •

[fols. 257-263] (Thereafter, on Friday, July 1, 1966, came again the parties and the following proceedings were had:)

The Court: United States vs: Bruton and Evans.

You gentlemen may proceed.

• • • • • • •

[fol. 264] Mr. Reardon: May it please the Court, I'm sure that the court is familiar with the motion heretofore filed on behalf of the defendant Bruton. There is a matter that I would like to draw specifically to the court's attention without quoting from decisions, the last of which, of course, was Miranda vs. Arizona, dating back, highlight of the Escobedo opinion, so forth, discussing various facets of affording a defendant procedural safeguards that are [fol. 265] deemed to be effective to secure his privilege against self-incrimination.

Basically the case turned upon individual factors, and I think that there is an interesting fact here insofar as defendant Bruton himself is concerned. He was brought before the Commissioner shortly after April 25th, at the time that he was arrested and identified by Shirley Miller, I believe her name was, the identifying witness, brought before the Commissioner on the 27th of April. Thereafter, on May 3rd he had a date before the Commission, Commissioner O'Toole, at which time, and I'm quite sure of the date, that I was present, together with Mr. Cooper, and both the defendants were brought over.

Now, the statement that was obtained from defendant Evans, which has major bearing with regard to defendant Bruton, was obtained on May 4th. This was after he became a federal prisoner, defendant Evans.

Insofar as a procedural safeguard that was given him, defendant Evans, with regard to the statement obtained on May the 4th, the court will remember from the evidence, from Thorn himself, Inspector Thorn, that it was made rather clear at the time of his first admission that the federal government, the prosecution by the federal government

would not take place until his state charges had been taken care of, or the state charge, one way or another. In other words, he would not become a prisoner of the federal gov-
[fol. 266] ernment until after he had paid his debt to the State of Missouri.

Now, then, that leaves the defendant with a clear implication, I think the court wil agree, that he's going to have to serve time for his Western Union robbery in Missouri and then come back to his Honor's court and answer for this charge, because he had been identified by two witnesses, and also had made this admission, I think at or near, on or about April 11th, or shortly thereafter. In any event, on May the 4th, after I had been before the United States Commissioner in behalf of defendant Bruton, and had obtained a setting —we didn't know whether, of course, the federal government was going to proceed by information or indictment, and after Mr. Cooper had been there, Inspector Thorn went to the city jail on May the 4th and by that time, of course, this defendant know that he was a federal prisoner, he had been before the Commissioner, the state charges had been dropped, and it was under these circumstances that he obtained a full and complete statement.

No. 1, with regard to the defendant Bruton, the statement isn't necessary; insofar as Evans is concerned the statement is obtained after the arrest of Bruton on April 25th, after there are already admissions in evidence, and obtained from defendant Evans, and so that I think that there is a severe lacking of procedural safeguards with regard to my defendant for the simple reason that Inspector Thorn went
[fol. 267] over and interviewed the man, defendant Evans, after a state charge was dropped, after he had already been identified by two people and had admitted it, and without going to the trouble of notifying either of the attorneys who would have a role in this particular case, either myself or Mr. Cooper. A warning is one thing, but certainly defendant Bruton had an interest in the statement that was obtained. I was never notified nor was Mr. Cooper. The record is absolutely silent with regard to this. You certainly have Inspector Thorn saying the fellow didn't have to make a statement, but what's in his mind? What safeguard has he given? He knows that he's already admitted the offense

on April 11th or thereabouts, and he's been identified by two people, and he knows on top of it when Thorn goes back over there that somehow, and Thorn had to be active in this by his own admission, he had to at least brought this to the attention of the Circuit Attorney's office, the state charge is dropped, so what reward can Thorn expect?

Of course, there's the statement implicating Bruton and without that statement, of course, the lawsuit as to Bruton is, of course, different. So, I think these are the facts, and I don't think—I think these are the facts, the argument, of course, is the idea of going over and getting the second statement from Evans is, of course, just to prejudice Bruton. Certainly, of course, although we didn't go through [fols. 268-270] it, I'm certain the court is well aware that Bruton had been questioned, certainly confronted with regard to it. In any event, I don't think there were adequate safeguards afforded this defendant Evans, or particularly my defendant, had I been notified, and I was already in the case by that time, so that I could have at least consulted with this man and at least tell him not to make a statement, not knowing whether or not he had indicated a desire to implicate Bruton in any way, shape or form. Any private conversation, and it had to be private, because Thorn went over there alone, and whatever Thorn may have told Evans is one thing, he says he told him he had a right to a lawyer, but, of course, I'm sure it's apparent to both individuals that there was no state charge against Evans at that time. I don't think there was adequate procedural safeguards afforded this man, all to the prejudice of defendant Bruton, and, therefore, we seek a new trial based upon the improper admission into evidence of the May the 4th statement, the May 4th statement, the second statement obtained by Farmer.

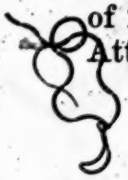
* * * * * * *

[fol. 270] Mr. Reardon: May it please the court, I do know, and I am confused with regard to the May the 3rd [fols. 271-274] date, because I checked with Mr. Cooper, we met here together, I think, on May the 10th, but I was in the case representing Bruton, as Mr. Koster indicated, on April the 29th, and it is the May 4th statement, of course,

that defendant Bruton complains of, but I am quite sure, while my dates may be wrong, I was in the case in Bruton's behalf prior to the statement Mr. Thorn obtained.

• • • • • • •

[fols. 275-279] In Cause No. 66 CR 80, United States vs. William James Evans and George William Bruton, defendant William James Evans being represented by Irving Cooper and George William Bruton by Dan Reardon, Jr., on the jury finding each of these defendants guilty to Count 1 in the indictment, it is the judgment of the court that the defendant William James Evans be committed to the custody of the Attorney General for a period of 25 years to be served in an institution designated by the Attorney General; defendant George Wiliam Bruton be committed to the custody of the Attorney General for a period of 25 years to be served in an institution designated by the Attorney General.



• • • • • • •

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967—251-814/385

PETITION FOR A WRIT OF CERTIORARI

that defendant Bruton complains of, but I am quite sure, while my dates may be wrong, I was in the case in Bruton's behalf prior to the statement Mr. Thorn obtained.

• • • • • • •

[fols. 275-279] In Cause No. 66 CR 80, United States vs. William James Evans and George William Bruton, defendant William James Evans being represented by Irving Cooper and George William Bruton by Dan Reardon, Jr., on the jury finding each of these defendants guilty to Count 1 in the indictment, it is the judgment of the court that the defendant William James Evans be committed to the custody of the Attorney General for a period of 25 years to be served in an institution designated by the Attorney General; defendant George Wiliam Bruton be committed to the custody of the Attorney General for a period of 25 years to be served in an institution designated by the Attorney General.

• • • • • • •

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967—231-914/10

No. [redacted]

MAY 16 1967

JOHN F. DAVIS, CLE

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

No. 18,490.

GEORGE WILLIAM BRUTON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

DANIEL P. REARDON, JR.,
706 Chestnut Street, Suite 411,
St. Louis, Missouri 63101,
CHestnut 1-7325,
Attorney for Petitioner.

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St., 63101. CEntral 1-4477.

INDEX.

	Page
Jurisdiction	1
Question Presented	2
Statement	2
Reasons for granting the writ	3
Conclusion	7
Appendix—Opinion of United States Court of Appeals for the Eighth Circuit	9

Cases Cited.

Anderson v. United States, 318 U. S. 350 (1942)	4
Barton v. United States, 263 F. 2d 894 (5th Cir. 1959)	5, 6
Delli Paoli v. United States, 369 F. 2d 968 (8th Cir. 1966)	3
Fahey v. Connecticut, 375 U. S. 85 (1963)	6
Golliher v. United States, 362 F. 2d 594 (8th Cir. 1966)	3
Greenwell v. United States, 336 F. 2d 962 (D. C. Cir. 1964)	4
Haggard v. United States, 369 F. 2d 968 (8th Cir. 1966)	3
Miranda v. Arizona, 384 U. S. 436 (1966)	3
Opper v. United States, 348 U. S. 84 (1954)	3
United States v. Gardner, 347 F. 2d 405 (7th Cir. 1965)	3
Westover v. United States, 384 U. S. 436 (1966)	3

Statutes Cited.

18 U. S. C., Section 2114 (1948)	2
28 U. S. C., Section 1254 (1)	1

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

No. 18,490.

GEORGE WILLIAM BRUTON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in the above-entitled case on March 22, 1967.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on March 22, 1967. The jurisdiction of this Court is involved under 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED.

Whether Petitioner was unduly prejudiced by the allowing into evidence within the hearing of the jury an involuntary confession, given by his co-defendant, William James Evans, to a United States Postal Inspector which implicated this petitioner as his accomplice to the charge of violating 18 U. S. C., Section 2114 (1948).

STATEMENT.

William James Evans and George William Bruton were jointly indicted, tried and convicted in the United States District Court for the Eastern District of Missouri by a jury of violating 18 U. S. C., Section 2114 (1948). Following the entry of judgment imposing the mandatory sentence of twenty-five years they duly perfected their appeals to the United States Court of Appeals for the Eighth Circuit.

Even though the Government had positive identifications of Defendant Evans by the two victims whe were at the scene, a confession, given by William James Evans to J. B. Thorn, a United States Postal Inspector, was admitted into evidence at the trial. By this confession, Mr. Evans admitted his participation in the robbery of a jewelry store and watch repair shop on South Kingshighway in St. Louis, Missouri, which was also a branch for the United States Post Department. This confession, while it described the participation of Defendant Evans in the robbery, implicated George William Bruton as his accomplice.

On appeal to the United States Court of Appeals, the respective counsels for these two Defendants argued that the United States District Court erred by denying a motion to suppress the confession on the grounds that it was given involuntarily and therefore not admissible into evi-

dence at a criminal prosecution under **Miranda v. Arizona,** 384 U. S. 436 (1966), and **Westover v. United States,** 384 U. S. 436 (1966). The Court reversed the conviction of Defendant Evans and remanded the cause for another trial, but it affirmed the conviction of Defendant Bruton. The reason for the Court of Appeals' decision was based on the fact that the confession was admitted as evidence against Evans only and that the trial court limited the purpose and the effect of the incriminating statements by its instruction that the jury consider them as evidence against Evans and not to consider them as evidence against Bruton. The United States Court of Appeals said at page 12 of its opinion:

> "To overturn Bruton's conviction we would be required to speculate that the jury, presumably composed of prudent and intelligent men, disregarded the court's instructions and their oaths."

REASONS FOR GRANTING THE WRIT.

The United States Court of Appeals for the Eighth Circuit grounds its decision sustaining William George Bruton's conviction on **Delli Paoli v. United States,** 369 F. 2d 968 (8th Cir. 1966); **Opper v. United States,** 348 U. S. 84 (1954); **Haggard v. United States,** 369 F. 2d 968 (8th Cir. 1966); **Golliher v. United States,** 362 F. 2d 594 (8th Cir. 1966); and **United States v. Gardner,** 347 F. 2d 405 (7th Cir. 1965). These five cases deal with situations wherein two or more defendants were joined in the same trial and a voluntary confession, admitted into the evidence, given by one defendant implicating another defendant in the crime for which they were being tried. The situation presented in this case, however, is not the situation involved in those cases given consideration by the Eighth Circuit Court of Appeals. Rather, in this case, Defendant Evans' confession was declared to be involuntary and therefore inadmissible as evidence in trial.

Petitioner directs the Court's attention to the case of **Greenwell v. United States**, 336 F. 2d 962 (D. C. Cir. 1964). During appellant Greenwell's trial with his co-defendant Seals, Seals' confession was admitted into evidence. At trial, Greenwell's name was deleted from the confession and "named person" substituted. In granting a new trial for Greenwell, the District of Columbia Circuit Court said at page 969:

> "But with Greenwell and Seals on trial before the same jury at the same time charged with the same crime, and with other evidence in the case connecting the co-defendants in the commission of the crime, it is difficult to believe that the jury was unable to divine who the 'anonymous nobody' referred to in the confession was. Stein v. New York, 346 U. S. 156, 194, 73 S. Ct. 1077, 97 L. Ed. 1522 (1953). Even had not a witness inadvertently mentioned Greenwell's name once in reciting Seals' confession, as did occur, the jury could well have understood that the person incriminated in Seals' admissions was the other defendant sitting next to him."

The court went on to say on the same page of its opinion:

> "We conclude that the admission of Seals' confession, **since it was improper as to Seals**, justifies the retrial of his co-defendant, Greenwell, in a proceeding in which this confession does not reach the jury, . . ." (emphasis added).

Likewise in **Anderson v. United States**, 318 U. S. 350 (1942), the Supreme Court of the United States was faced with a similar situation. Here the circumstances under which confessions were obtained from defendants rendered them inadmissible in evidence in a criminal prosecution. The Court held that convictions founded on inadmissible evidence must be set aside, even as to those co-defendants who did not give confessions. The Court said at page 357:

"There is no reason to believe, therefore, that confessions which came before the jury as an organic tissue of proof can be severed and given distributive significance by holding that they had a major share in the conviction of some of the petitioners and none at all as to the others. Since it was error to admit these confessions, we see no escape from the conclusion that the convictions of all the petitioners must be set aside."

In **Barton v. United States**, 263 F. 2d 894 (5th Cir. 1959), the Fifth Circuit Court of Appeals determined that the Federal District Court erred by it denying a motion for severance. Before trial Barton voluntarily gave a statement to a Special Agent of the F. B. I. relating that co-defendant Mitchell acted with Barton in the commission of the offense charged. This statement was then introduced into the trial as evidence against Barton with an instruction to the jury that it was not to be considered evidence against Mitchell. In finding that this statement was prejudicial to Mitchell's case, the court said at page 897:

"We have quoted the main body of Barton's statement in footnote 2, supra. It accused Mitchell of being the instigator or of acting with Barton in every detail of the commission of each offense. It would be impossible to eliminate from the statement the parts prejudicial to Mitchell and no such attempt was made. The sole reliance for Mitchell's protection was the court's instruction to the jury, several times repeated, not to treat the statement as evidence against Mitchell. Considering the substance and terms of Barton's statement, we doubt whether it was at all possible to carry out that instruction. To do so certainly would require twelve minds more perfectly disciplined than those of the average human jurors."

Also see **Schaffer v. United States**, 221 F. 2d 17 (5th Cir. 1955).

Even though the petitioner in the Barton case asked for a severance, the absence of such motion in this case does not distinguish it from **Barton v. United States**, *supra*. Mitchell had to seek a severance to protect himself from a voluntary, admissible confession given by his co-defendant which he knew existed and which he knew would be introduced as evidence at the trial. On the other hand, the Defendant Bruton in this case did not believe he would have to protect himself from prejudice, for the confession in this case was involuntary and therefore not admissible in trial as evidence against the declarant. Before trial, a person accused of a crime is not obligated to defend against violations, at trial, of the rules of evidence, for such would be a denial of the fundamental ideas of fairness implicit within the notion of "due process." A defendant has a right to assume that the laws of evidence will be applied during the course of his trial.

The Eighth Circuit Court of Appeals found that the evidence against Defendant Bruton was sufficient to sustain his conviction even if his co-defendant's confession had not been introduced into evidence. This is begging the question. The evidence, apart from his confession, introduced to prove the case against Evans was more substantial than that introduced to prove the case against Bruton, yet the Government saw fit to introduce this confession to insure the declarant's conviction. This question was decided in **Fahey v. Connecticut**, 375 U. S. 85 (1963), wherein the United States Supreme Court reversed a conviction because inadmissible evidence was introduced at the trial, even though the evidence which was admissible was sufficient to sustain the conviction. The Court said on pages 86 and 87 of its opinion:

> "We are not concerned here with whether there was sufficient evidence on which the petitioner could have been convicted without the evidence complained of. The question is whether there is a reasonable

possibility that the evidence complained of might have contributed to the conviction."

Certainly there is a reasonable possibility that the involuntary and inadmissible confession given by Evans contributed to the conviction of George William Bruton.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

.....

DANIEL P. REARDON, JR.,
706 Chestnut Street, Suite 411,
St. Louis, Missouri 63101,
CHestnut 1-7325,
Attorney for Petitioner.